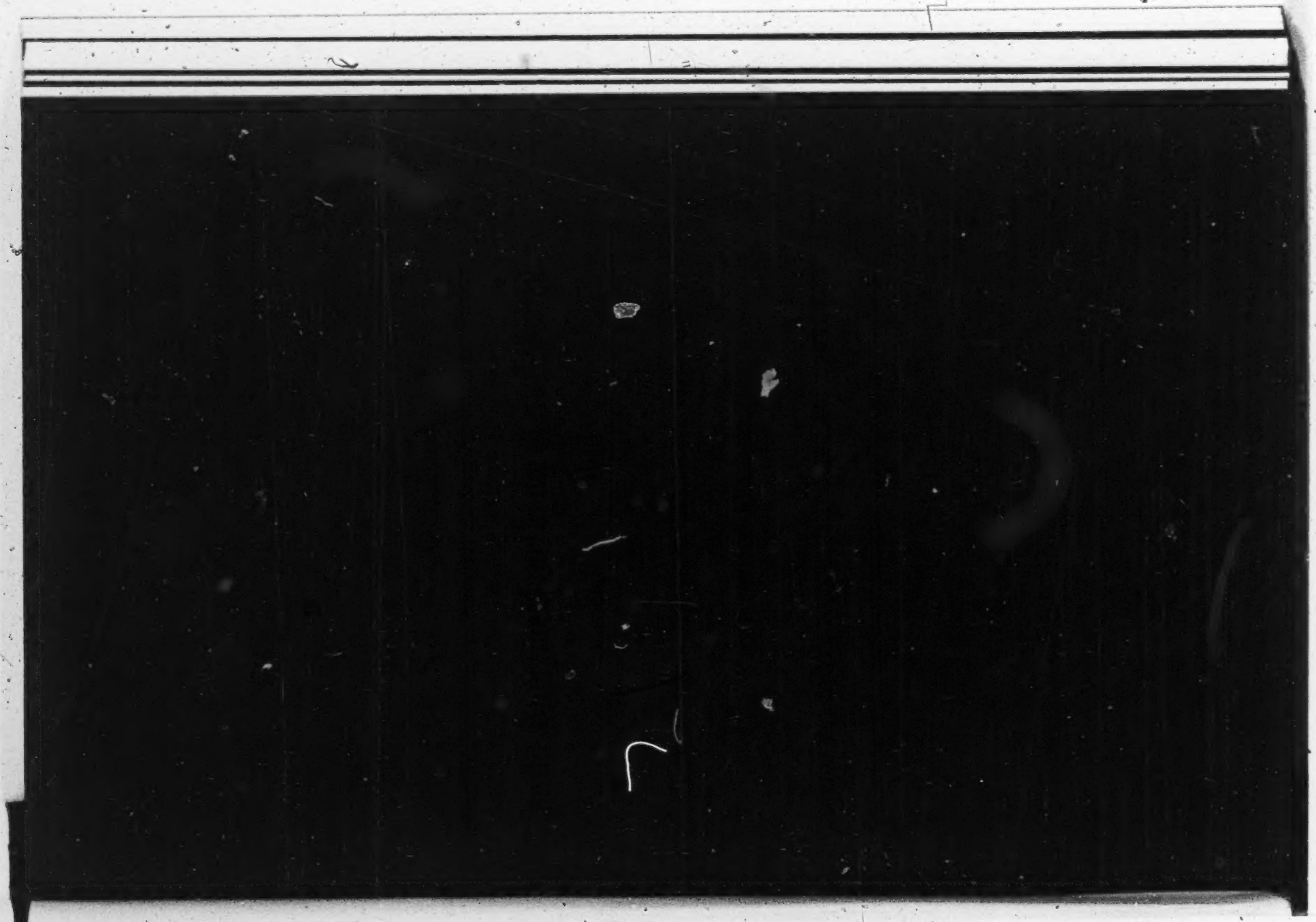

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In the Supreme Court of the United States.

OCTOBER TERM, 1940

No. ——, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, asks leave of the Court to file its Complaint against the State of Alabama, submitted herewith.

ROBERT H. JACKSON,
Attorney General.

FRANCIS BIDDLE,
Solicitor General.

November 1940.

271196—40

STATEMENT IN SUPPORT OF MOTION

In a number of states, including Alabama, real estate taxes are by statute declared to be a lien on the land as of a date when, because the tax rate has not been fixed or the value of the property determined, the amount of taxes thereafter due and payable cannot be ascertained. The purpose of this suit is to determine whether real estate acquired by the United States after a statutory lien date but before the amount of taxes can be calculated passes to the Government subject to the lien.

Pursuant to the various recovery programs, the United States made extensive purchases of land in the State of Alabama and in other states having similar lien statutes. In making such purchases it has provided for the payment not only of taxes then due but also of taxes which, although not yet due, could then be calculated. Almost uniformly, however, it has made no provision for payment of taxes, the amounts of which were not ascertainable at the time of transfer. Relying on the statutory liens, various taxing bodies, including the State of Alabama, assert claims for taxes against real estate acquired by the United States after the lien date but before completion of levy and assessment.

As the attached complaint discloses, a statute of the State of Alabama provides that on October 1 of each year real estate is subject to a lien for state and

county taxes due the following October 1 (Gen. Acts 1935, No. 194 (p. 256), Secs. 372, 11). However, the assessed value of the real estate is not finally fixed until about the first of April. The rates of state taxation are fixed by statute (Sec. 8). But the rate of county taxation is not fixed until February, when the Court of County Commissioners sits to fix the rates for general and special county taxes (Sec. 64). Thereafter, the county boards of review consider and revise the valuations made by the county assessors. The boards meet on the second Monday of March and sit until not later than the first Monday in April (Sec. 72). Thus it is impossible to calculate the amounts of taxes until the boards of review have completed their work.

The United States has not made provision for the payment of taxes on Alabama lands acquired after October 1 but before the amounts of the taxes could be computed. As a result, numerous tracts of land owned by it have been sold for delinquent state and county taxes. The prayer of the attached complaint is to quiet the title of the United States to three tracts of land acquired respectively, October 1, 1936, December 9, 1936, and March 10, 1937. These dates are on or after the lien date and before the values were definitely determined, by reason of the adjournment of the boards of review. Each of these tracts has been sold to the State of Alabama for unpaid taxes for the year commencing October 1, 1936.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. ——, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, brings this suit in equity against the defendant, the State of Alabama, and for its cause of action states:

I

The plaintiff is the owner in possession of the following described tracts of land situate in the County of Macon, State of Alabama, all of which were acquired by the plaintiff at the time and in the manner more particularly set forth following the individual descriptions:

Tract 1:

SE¼ of SE¼ of Sec. 35, Twp. 18 North, Rge. 24 East; SW¼ of SW¼ of Sec. 36, Twp. 18 N., Rge. 24 E.; 10 acres off the West

Side of SE¼ of SW¼ of Sec. 36, Twp. 18 North, Rge. 24 East, said 10 acres being in the form of a rectangle 110 yds. by 440 yds.; E½ of E½ of Sec. 2, Twp. 17 North, Range 24 East and 174 acres off the West Half of Sec. 1, Twp. 17 N., Rge. 24 E.

Conveyed to the United States by J. E. Bridges et al., by deed dated October 1, 1936, recorded October 1, 1936, in Deed Book 28, page 579.

Tract 2:

SW¼ of NW¼ of Sec. 36, Twp. 18 N., Rge. 24 E., of St. Stephens Meridian, less Two Acres off of the NW cor. of Tract for School Lot; subject to Right-of-Way to M. W. Zachary, over a strip of land thirty (30) feet wide running along the So. Boundary of the W½ of S½ of NW¼ of Sec. 36, Twp. 18 N., Rge. 24 E., 6.3 acres on E. side of SE¼ of NE¼, Sec. 35, T. 18 N., Rge. 24 E., St. Stephens Meridian.

Conveyed to the United States by Tom W. Willis and wife by deed dated December 9, 1936, recorded December 10, 1936, in Book 31 of Deeds, page 42, and by deed from Tom W. Willis and wife dated December 9, 1936, recorded December 10, 1936, in Book 31 of Deeds, page 41.

Tract 3:

That part of the E½ of Sec. 21, lying West and South of the Euphaupee Creek, containing 160 acres; the W½ of W½ of Sec. 27, containing 160 acres; the E½ of Sec. 28, containing 320 acres; the E½ of

NE¼, and that part of the N½ of NE¼ of SE¼ of Sec. 33, lying North of the Community Public Road, containing 80 acres. All of the above-described property in Twp. 17 N., Rge. 24 E., containing 720 acres, more or less.

Conveyed to the United States by R. M. Boyd and wife by deed dated March 10, 1937, recorded March 11, 1937, in Book 31 of Deeds, page 121.

II

At the time of the transfer of title to the United States the amount of state and county taxes against each of said parcels of land for the tax year 1937; i. e., for the year commencing October 1, 1936, had not been determined or ascertained, and said taxes were not paid either at the time of the various transfers or thereafter. Notwithstanding the fact that the amount of said taxes had not been ascertained prior to the acquisition of title by the plaintiff, said lands were thereafter returned delinquent and, pursuant to decrees of the Probate Court of Macon County, were sold to the defendant under the laws of the State of Alabama. Thereafter on, to wit, June 29, 1939, certificates of purchase were issued to the defendant which certificates were not thereafter assigned and which are numbered as follows: Tract 1, Certificate No. 2; Tract 2, Certificate No. 7; Tract 3, Certificate No. 1.

III

The defendant is asserting that valid liens were created against the above-described lands in the amount of the 1937 tax assessments by reason of a statute of the State of Alabama which declares that the state and county taxes for the tax year 1937 became a lien on October 1, 1936. The defendant is further claiming an interest in said lands adverse to the title and ownership of the plaintiff by reason of the subsequent tax sales and the subsequently issued certificates of purchase.

IV

These claims constitute clouds on the title to the lands herein described which interfere with the lawful use thereof by the plaintiff and which will interfere with any efforts to dispose of said lands in the future unless said tax certificates and asserted liens are declared void and the defendant perpetually enjoined from making any claim by reason thereof.

V

Any attempt by the defendant or its future assignees to assert its claims or to obtain possession of said lands will result in irreparable injury to the plaintiff for which there is no adequate remedy at law.

VI

The claims of the defendant to an interest in said lands, by virtue of the tax liens and sales,

are invalid as amounting to an attempt to tax property of the plaintiff in violation of the Constitution of the United States, and as resulting from judicial proceedings in which the United States was made a defendant without its consent.

Wherefore, plaintiff prays:

1. That a decree be entered declaring and adjudging that the said 1937 tax assessments did not create a lien against the lands described in this complaint.

2. That a decree be entered quieting the plaintiff's title to said lands and declaring void the tax certificates issued to the defendant.

3. That the defendant, its officers and assigns be forever enjoined from asserting any claim whatsoever in and to said lands adverse to the plaintiff or its successors in title.

4. For such other and further relief as this Court may deem proper and necessary.

ROBERT H. JACKSON,
Attorney General.

FRANCIS BIDDLE,
Solicitor General.

NOVEMBER 1940.

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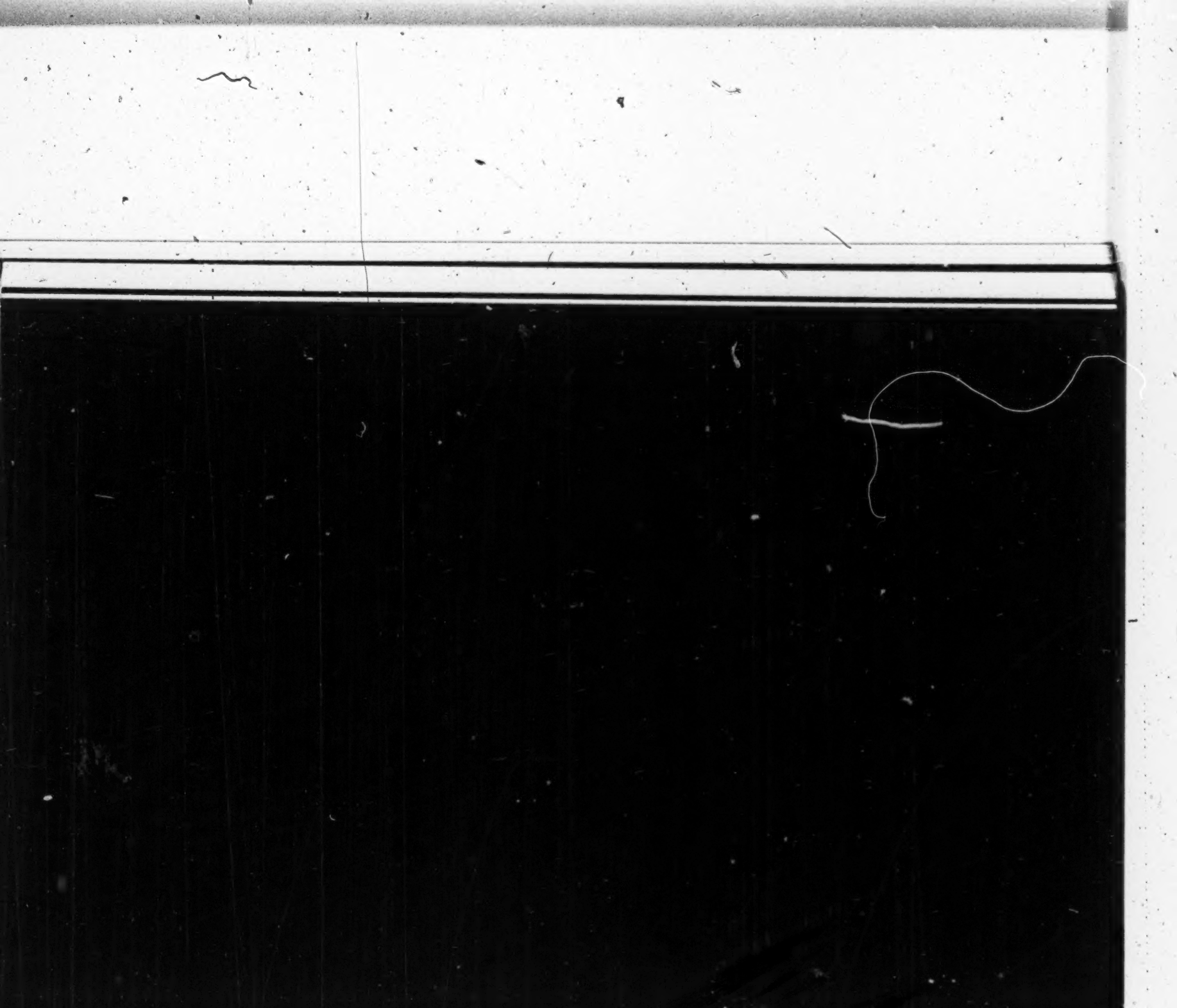

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. —, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

MEMORANDUM FOR THE UNITED STATES IN RESPONSE TO THE STATE'S RETURN TO THE RULE TO SHOW CAUSE

On November 18, 1940, the United States asked leave to file a complaint against the State of Alabama to quiet title to three tracts of lands acquired respectively October 1, 1936, December 10, 1936, and March 10, 1937, which have been sold to the State for unpaid taxes due October 1, 1937. On November 25, 1940, this Court issued to the State of Alabama its rule to show cause why leave to file should not be granted. On January 6, 1941, the State made return to the rule setting forth nine objections to maintenance of the proposed action. It is the Government's view that a short response to these objections may facilitate this Court's consideration of the State's return.

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As the complaint discloses (par. VI) the United States contends that the claims of the State to an interest in the lands are invalid as amounting to an attempt to tax property of the United States and as resulting from judicial proceedings in which the United States was made defendant without its consent. As summarized in the supporting brief, the objections raised by the State's return are in substance as follows: (1) The question presented depends solely upon a construction of Alabama taxing statutes. (2) The question can be decided in the courts of Alabama. (3) The complaint does not state a cause of action. (4) The Alabama Constitution prohibits the maintenance of an action against that State.

The first three objections relate only to the complaint's assertion that the claims of the State are invalid as amounting to an attempt to tax property of the United States. The State does not discuss the further contention that the claims are also invalid as resulting from proceedings in which the United States was made defendant without its consent. Hence, even if these objections were well-taken, they would not militate against the right of the United States to maintain the action.

Moreover, all of the objections are without substance.

1. The State argues (pp. 7–10) that the question depends solely upon Alabama taxing laws. However, it is evident that there is no dispute as

to the meaning of the relevant Alabama statutes. The Government agrees that section 372[1] imposes a lien as of October 1, 1936, for the taxes due October 1, 1937. Also, as the State's supporting brief concedes (pp. 3, 16), it is clear that, when the United States acquired the lands, the 1937 taxes had not been ascertained because the value of the lands had not been assessed and in some instances the rate of taxation had not been fixed. These are the only questions of Alabama law involved.

The question to be decided here is one of federal law. The Government will contend that lands are not liable for taxes until the amounts of the taxes have been ascertained by fixing the rate and assessing the value; that, because the values had not been assessed and the rates of taxation had not been fixed when the United States acquired the lands, the lands were not then liable for taxes; and that, since the State cannot tax property of the United States, it could not by subsequent assessments impose upon the lands liability for taxes.

This contention cannot be decided by resort to Alabama statutes. *Witherspoon* v. *Duncan*, 4 Wall. 210, 217. Indeed, the State's brief does not contend otherwise. Rather, it merely asserts (pp. 15–20) that the legislature of Alabama imposed this liability. If the liability of federal property to state taxes depended upon the varying

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[1] Act No. 194, Ala. Gen. Acts 1935, pp. 256, 566.

statutes of the several states, it is manifest that the states and not the United States would determine whether federal property should be taxed. "But whether the property of the United States shall be taxed under the laws of a State depends upon the will of its owner, the United States, and no State can tax the property of the United States without their consent." *Van Brocklin* v. *State of Tennessee,* 117 U. S. 151, 175.

2. The State asserts (pp. 11–15) that the question could be decided in a suit brought by the State against the United States in the courts of Alabama, if the United States would consent to such a suit. The argument that such a procedure is preferable to a suit in this Court assumes that the issue is to be determined by resort to the Alabama statutes. As just shown, the assumption is erroneous. Furthermore, as the State concedes (pp. 14, 20), Congress has not consented that the United States be sued in the courts of Alabama.

3. The State's further argument (pp. 15–20) that the complaint fails to state a cause of action likewise rests upon the assumption already shown to be erroneous, that the sole question presented is one of Alabama law, i. e., when, under the terms of section 372, Ala. Gen. Acts 1935, the lien for taxes attaches to assessed property. As stated, there is no question but that the statute imposes a lien as of October 1, but there are numerous cases

holding that such a statutory lien is ineffective until completion of levy and assessment.[2]

4. There is no merit in the State's final suggestion (pp. 20–21) that it may not be sued by the United States. *United States* v. *Texas*, 143 U. S. 621, 646; *Monaco* v. *Mississippi*, 292 U. S. 313, 329.

Respectfully submitted.

ROBERT H. JACKSON,
Attorney General.

FRANCIS BIDDLE,
Solicitor General.

JANUARY 1941.

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[2] *United States* v. *Pierce County*, 193 Fed. 529 (W. D. Wash., 1912); *Bannon* v. *Burnes*, 39 Fed. 892, 897, 898 (C. C. W. D. Mo., 1889); *Territory* v. *Perrin*, 9 Ariz. 316, 320 (1905); *State* v. *Snohomish County*, 71 Wash. 320, 324–326 (1912); *Portland* v. *Multnomah County*, 135 Ore. 469, 473 (1931); *City of Laurel* v. *Weems*, 100 Miss. 335, 340–341 (1911); *Gillmor* v. *Dale*, 27 Utah 372, 377 (1904); *State ex rel. Hinson* v. *Nickerson*, 99 Neb. 517, 520 (1916); *Denver* v. *Research Bureau*, 101 Colo. 140, 144 *et seq.* (1937). See also *United States* v. *City of Buffalo*, 54 F. 2d 471, 474 (C. C. A. 2, 1931); *United States* v. *Certain Land in City of St. Louis, Mo.*, 29 F. Supp. 92, 96 (E. D. Mo., 1939); *In re Opinions of the Justices*, 234 Ala. 358, 363 (1937).

U. S. GOVERNMENT PRINTING OFFICE: 1941

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INDEX

	Page
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Summary of argument	7
Argument:	
I. Since the lands were acquired before the time when by completion of levy and assessment the amounts of state taxes had been ascertained, they are not subject to liens for the taxes	8
II. The probate court of Macon County, Alabama, was without jurisdiction to decree that the lands of the United States be sold to pay the taxes	20
Conclusion	22
Appendix A	24
Appendix B	42

CITATIONS

Cases:	
Bannon v. *Burnes*, 39 Fed. 892	10, 16
Belknap v. *Schild*, 161 U. S. 10	21
Board of County Com'rs v. *Central Baptist Church*, 136 Okla. 99	19
Buckhout v. *City of New York*, 176 N. Y. 363	10
City of Laurel v. *Weems*, 100 Miss. 335	18, 19
Clallam County v. *United States*, 263 U. S. 341	11
Cunningham v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446	21
Denver v. *Research Bureau*, 101 Colo. 140	18
Dowdney v. *Mayor, etc., New York City*, 54 N. Y. 186	10
Elyton Land Co. v. *Mayor and Aldermen of Birmingham*, 89 Ala. 477	9
Gaston v. *Reconstruction Finance Corporation*, 237 Ala. 111	12
Gillmor v. *Dale*, 27 Utah 372	10, 18
Goldberg v. *Daniels*, 231 U. S. 218	21
Hagood v. *Southern*, 117 U. S. 52	21
Hallinger v. *Zimmerman*, 63 N. J. Eq. 100	10
Heine v. *The Levee Commissioners*, 19 Wall. 655	12
Kern v. *Towsley*, 45 Barb. 150	10

392811—41——1

Cases—Continued. Page

Laney v. *Proctor*, 236 Ala. 318 ... 12
Lee v. *Osceola Imp. Dist.*, 268 U. S. 643 ... 11
Lewis v. *Burch*, 215 Ala. 20 ... 12
Louisiana v. *Garfield*, 211 U. S. 70 ... 21
McHenry Church v. *McNeal*, 86 Miss. 22 ... 19
Minnesota v. *Hitchcock*, 185 U. S. 373 ... 21
Minnesota v. *United States*, 305 U. S. 382 ... 20
Mullen Benevolent Corp. v. *United States*, 290 U. S. 89 ... 11
Naganab v. *Hitchcock*, 202 U. S. 473 ... 21
New Mexico v. *Lane*, 243 U. S. 52 ... 21
New York v. *Maclay*, 288 U. S. 290 ... 7, 10, 13, 14
Opinions of the Justices, In re, 234 Ala. 358 ... 7, 12
Oregon v. *Hitchcock*, 202 U. S. 60 ... 21
People v. *Commissioners*, 104 U. S. 466 ... 11
People v. *Weaver*, 100 U. S. 539 ... 9
Perry County v. *Railroad Company*, 58 Ala. 546 ... 9
Portland v. *Multnomah County*, 135 Ore. 469 ... 10, 18
Stanley v. *Schwalby*, 162 U. S. 255 ... 21
State v. *Northwestern Tel. Exchange Co.*, 80 Minn. 17 ... 11
State v. *Snohomish County*, 71 Wash. 320 ... 10, 18
State ex rel. Hinson v. *Nickerson*, 99 Neb. 517 ... 18
State of Texas v. *Farmer*, 94 Tex. 232 ... 10
Territory v. *Perrin*, 9 Ariz. 316 ... 10, 16
The People v. *Ladies of Loretto*, 246 Ill. 403 ... 19
The Siren, 7 Wall. 152 ... 20, 22
United States v. *Certain Lands in City of St. Louis, Mo.*, 29 F. Supp. 92 ... 16
United States v. *City of Buffalo*, 54 F. 2d 471, certiorari denied, 285 U. S. 550 ... 11, 16, 19, 22
United States v. *Pierce County*, 193 Fed. 529 ... 11, 16, 17, 18
Van Brocklin v. *State of Tennessee*, 117 U. S. 151 ... 7, 11, 17
Wood v. *McCook Water-Works Co.*, 97 Neb. 215 ... 11

Statutes:

Act of March 2, 1819, c. 47, sec. 6, 3 Stat. 489 ... 11
R. S., sec. 3466, 31 U. S. C. sec. 191 ... 14
Constitution of Alabama, Arts. XIV and XIX ... 2, 4, 13, 39, 40
Alabama General Acts 1935, No. 194, pp. 256–574 ... 2, 3, 4, 5, 7, 8, 9, 11, 12, 19, 24–39

Texts and Miscellaneous:

Berg, *The Status of Taxes Relative to Land Acquired by the United States*, 16 Oregon Law Review, pp. 340–356 (1937) ... 16, 19
3 Cooley, *Taxation* (4th ed. 1924), secs. 1012, 1015, 1043, 1045, 1135, 1232 n. 13 ... 9, 16
48 L. R. A. (N. S.) pp. 708–712 (1914) ... 16

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 12, Original

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

BRIEF FOR THE UNITED STATES

JURISDICTION

On November 18, 1940, the United States asked leave to file a complaint against the State of Alabama. On November 25, 1940, this Court issued to the State of Alabama its rule to show cause why leave to file should not be granted. On January 6, 1941, the State made return to the rule setting forth objections to maintenance of the proposed action. Thereafter, the United States filed a memorandum in response to the State's return. On January 20, 1941, the Court granted the motion for leave to file the complaint and process was ordered to issue. On March 3, 1941, the State filed its answer.

The jurisdiction of this Court rests on section 233 of the Judicial Code, 28 U. S. C., sec. 341.

QUESTIONS PRESENTED

1. Whether real estate is subject to a lien for state taxes when it is acquired by the United States after the date upon which property is made subject to such a lien by state statute, but before the time when by completion of levy and assessment the amount of taxes is ascertained.

2. Whether a state court has jurisdiction to order the sale of lands belonging to the United States.

STATUTES INVOLVED

The pertinent sections of Alabama General Acts 1935, No. 194, pp. 256–574, and of Articles XIV and XIX of the Constitution of Alabama, are printed as Appendix A (pp. 24–41, *infra*).

STATEMENT

This is a suit to quiet the title of the United States to three tracts of land in Macon County, Alabama, which have been sold to the State of Alabama for unpaid taxes for the tax year 1937, i. e., for the year commencing October 1, 1936.

The determinative facts are undisputed:[1]

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[1] The procedure for imposition and collection of taxes is prescribed by Alabama General Acts 1935, No. 194, pp. 256–574, the pertinent provisions of which are set forth in Appendix A (pp. 24–39, *infra*). Certain public records, certified copies of which have been filed with the Clerk, disclose how this procedure was applied in respect of the lands here involved. The records relating to tract 1, which was acquired from C. C. and J. E. Bridges, are typical. They are set forth in Appendix B (pp. 41–46, *infra*).

The tax lien statute.—Section 372 of Act No. 194 (p. 566)[2] provides that on the first day of October, when property becomes assessable, the state and county shall have a lien on each and every parcel owned by any taxpayer for the payment of all taxes which may be assessed. It is further provided that the lien may be enforced by foreclosure sale.

The lands involved.—On October 1, 1936, C. C. and J. E. Bridges conveyed to the United States the tract first described in paragraph 1 of the complaint. On December 10, 1936, Tom W. Willis and wife conveyed to the United States the tract next described in that paragraph. On March 10, 1937, the tract last described was acquired by the Government from R. M. Boyd and wife.

Levy of the taxes.—The rate of state taxes is fixed by section 8 of Act No. 194 (p. 263) at sixty-five cents on each hundred dollars of assessed value. Consequently, the state rate was fixed when the United States acquired the lands. The rate of county taxes was not set until February 8, 1937, after the first two tracts had been acquired. On that day, a levy of seventy-five cents was made by the county board of revenue (Appendix B, p. 42, *infra*). At a county election held June 14, 1937, after all three conveyances,

[2] Unless otherwise noted, all Alabama statutes cited in this brief are provisions of Act No. 194, Ala. Gen. Acts 1935. Therefore, only the particular section, together with the page on which it is found, is cited.

county and district school taxes totaling seventy cents per hundred were voted. The levy of these school taxes was authorized by Art. XIV, sec. 269, and Art. XIX of the Constitution of Alabama.

Assessment of the taxes.—When the United States acquired the lands, the assessed values had not been determined. Assessment began October 1, 1936. Sec. 29, p. 274. The procedure was as follows: First, the county assessor listed (sec. 29) and valued (sec. 50, p. 284) the property. The definitive assessment was made by the county board of review (sec. 72, p. 292), consisting of the members of the county board of revenue and of the assessor (sec. 67, p. 289). The Board met on March 8, 1937 (App. B, p. 42, *infra*). As section 72 declares, it was the board's duty to "review, revise, correct and fix the assessment values made by the assessor by raising or lowering the assessment * * * in such manner as to secure the assessment of property at sixty per cent of its fair and reasonable market value." Having completed its work, the board of review adjourned March 20, 1937 (App. B, p. 43, *infra*). Thereupon, the assessments were open for inspection. Sec. 74, pp. 292–293. The last of the three tracts had been conveyed to the United States on March 10.

Sales of the lands for the taxes.[3]—The delinquent tax docket discloses that the property conveyed by

[3] The facts contained under this head of the Statement were, unless otherwise noted, taken from public records. As

Bridges was assessed at $2,110, that conveyed by Willis at $780, and that conveyed by Boyd at $5,040. The docket further shows that, by application of the tax rates to these assessed values, state, county, and school taxes, respectively aggregating $44.31, $13.22, and $105.84, were imposed.

The taxes were due October 1, 1937, and, not being paid, became delinquent January 1, 1938. Sec. 11, p. 267. However, lands may be sold for taxes only when the collector reports to the court that otherwise he cannot collect the taxes. Sec. 214, p. 351. In the case of each of the Government's vendors, the collector certified to the court that he could not collect the taxes "assessed against the real estate * * * or the owner thereof, without a sale of the said lands" and asked that the court decree a sale for that purpose. Thereupon, the court directed each taxpayer to appear and show cause why a decree of sale should not be made. May 16, 1938, the court decreed that the tract bought from Bridges be sold for the unpaid taxes, $44.31 and costs of $10.66. The same day, it ordered the sale of the Boyd tract for taxes of $105.84 and costs of $12.38. June 12, 1938, a like decree was made in respect of the Willis tract for taxes of $13.22 and $2.19 costs.

Section 230 (pp. 356–357) provides:

> If no person shall bid for any real estate * * * an amount sufficient to pay the sum

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has been stated, the records in respect of the Bridges tract are set forth in Appendix B (pp. 41–46, *infra*).

> specified in the decree of sale, and the costs and expenses subsequently accruing, the Judge of Probate shall bid in such real estate for the State at a price not exceeding the sum specified in such decree and such subsequently accruing costs and expenses.

At sales held June 12, 1939, the lands were bid in for the State, the Bridges tract for $58.98, the Boyd tract for $118.84, and the Willis tract for $19.51. June 27, 1939, the probate court confirmed the sales and issued certificates of purchase to the State.

By this suit, the United States seeks a decree that the 1937 taxes did not create a lien against the lands described in the complaint and that the certificates of purchase issued to defendant are void. The complaint asserts (par. VI) that the claims of the State to an interest in the lands are invalid as amounting to an attempt to tax property of the United States and as resulting from judicial proceedings in which the United States was made defendant without its consent. The State's answer asserts (pars. 1, 2) that the United States acquired the lands subject to the liens for the 1937 taxes and (par. 2) that, as purchaser upon the tax sales, the State acquired title to the lands subject to the right of the United States to redeem by paying taxes and costs.

SUMMARY OF ARGUMENT

I

When the lands in question were acquired by the United States the amount of the taxes had not been ascertained because the values had not been assessed and the rates of taxation had not been fixed. Therefore the taxes had not then been imposed. Since the property of the United States is not subject to state taxation (*Van Brocklin* v. *State of Tennessee,* 117 U. S. 151, 168, 180), the State was thereafter powerless either to tax the United States or its lands or to make its lands liable in the event the former owners could not be made to pay.

The Alabama lien statute, section 372, Ala. Gen. Acts 1935, No. 194, p. 566, declares that as of October 1, 1936, i. e., before the lands were acquired by the United States, the lands became subject to liens for taxes due October 1, 1937. But section 372 did not *per se* impose upon the lands a liability for taxes. It does not impose taxes but secures their payment and, unless taxes are imposed, has no effect. It provides for a lien which becomes "fixed and final" only when taxes have been ascertained by completion of levy and assessment. *New York* v. *Maclay,* 288 U. S. 290; *In re Opinions of the Justices,* 234 Ala. 358, 363 (1937). Before the liens became fixed, the State was divested of its power to impose a liability upon the lands.

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The lower federal courts, when the question has arisen, have held, as the Government here contends, that the statutory declaration of a lien for taxes imposes no liability upon property conveyed to the United States before the taxes have been ascertained by completion of levy and assessment.

II

The certificates of purchase issued to the State of Alabama are void also because they resulted from judicial proceedings in which the United States was made defendant without its consent. The State of Alabama claims the title to the lands as a result of the decrees entered in those proceedings. It is thus apparent that the United States is the party against which the proceedings were instituted. Since the state court had no jurisdiction over the United States or its property, it could not divest the title of the United States.

ARGUMENT

I

SINCE THE LANDS WERE ACQUIRED BEFORE THE TIME WHEN BY COMPLETION OF LEVY AND ASSESSMENT THE AMOUNTS OF STATE TAXES HAD BEEN ASCERTAINED, THEY ARE NOT SUBJECT TO LIENS FOR THE TAXES

The State of Alabama claims that on October 1, 1936, the three tracts of land became subject to liens for taxes due October 1, 1937. This claim is grounded upon section 372 of Act No. 194, p. 566. So far as material, the section provides:

> From and after the first day of October of each year, when property becomes assess-

> able the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him * * * which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; * * *. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced.

The United States contends that it acquired the lands before taxes were imposed and liens perfected and thereafter the State was without power to tax the lands or subject them to liens.

1. On October 1, 1936, the taxes had not been ascertained. In Alabama, as elsewhere, two things are requisite for the ascertainment of an ad valorem tax: (1) The tax rate must be fixed and (2) the property must be valued. See e. g., *Perry County* v. *Railroad Company*, 58 Ala. 546, 559–560 (1877); *Elyton Land Co.* v. *Mayor and Aldermen of Birmingham*, 89 Ala. 477, 480, 481 (1889); *People* v. *Weaver*, 100 U. S. 539, 545–546; 3 Cooley, *Taxation* (4th ed. 1924) secs. 1012, 1015, 1043, 1045, 1135. On October 1, 1936, only the state tax rate (enacted by section 8 of Act No. 194) was fixed. The lands had not been valued and the county and school tax rates had not been

fixed. And when the three tracts were acquired by the United States, the taxes were still unascertained. The assessed values were not definitely determined until March 20, 1937, i. e., after the last acquisition. The county tax was levied February 8, 1937 (after the first two acquisitions) and the school taxes were voted June 14, 1937.

Therefore, it is evident that, for want of ascertainment of their amount, no taxes had been imposed when the United States acquired the lands. In the nature of things, there can be no tax until the amount thereof has been ascertained. *New York* v. *Maclay,* 288 U. S. 290, 292–293; *Kern* v. *Towsley,* 45 Barb. 150, 152 (N. Y. 1865); *Dowdney* v. *Mayor, etc., New York City,* 54 N. Y. 186, 188 (1873); *Hallinger* v. *Zimmerman,* 63 N. J. Eq. 100, 102–103 (1902); *Buckhout* v. *City of New York,* 176 N. Y. 363, 369 (1903); *Territory* v. *Perrin,* 9 Ariz. 316, 320 (1905); *State* v. *Snohomish County,* 71 Wash. 320, 323 (1912); *Gillmor* v. *Dale,* 27 Utah 372, 377 (1904); *State of Texas* v. *Farmer,* 94 Tex. 232, 235 (1900). And if the assessments had not been thereafter determined and the additional levies made, the taxes would never have been imposed. See *Bannon* v. *Burnes,* 39 Fed. 892, 898 (C. C. W. D. Mo. 1889); *Portland* v. *Multnomah County,* 135 Ore. 469, 473 (1931).

The ascertainment of the taxes, i. e., the completion of levy and assessment, after acquisition of the lands by the United States, could not impose any liability upon the lands. The State could still

levy and assess for the purpose of imposing a personal liability on the former owners.[4] But the property of the United States is not subject to state taxation. *Van Brocklin* v. *State of Tennessee*, 117 U. S. 151, 179–180; *Clallam County* v. *United States*, 263 U. S. 341, 345; *Lee* v. *Osceola Imp. Dist.*, 268 U. S. 643, 645.[5] Consequently, the State could not levy and assess in order to tax the United States on account of its ownership of the lands or for the purpose of making the lands primarily liable. *Mullen Benevolent Corp.* v. *United States*, 290 U. S. 89, 94–95. Obviously, therefore, the State could not by completing levy and assessment make the lands secondarily liable, i. e., liable in the event that the Government's grantors could not be made to pay.

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[4] That the Government's grantors could be taxed on account of their ownership of the lands on October 1, 1936, is indicated by *People* v. *Commissioners*, 104 U. S. 466, 468; *United States* v. *Pierce County*, 193 Fed. 529, 532 (W. D. Wash. 1912); *State* v. *Northwestern Tel. Exchange Co.*, 80 Minn. 17, 21 (1900); *Wood* v. *McCook Water-Works Co.*, 97 Neb. 215, 219 (1914). Cf. *United States* v. *City of Buffalo*, 54 F. 2d 471, 474 (C. C. A. 2, 1931).

[5] Section 6 of the Act of March 2, 1819, c. 47, 3 Stat. 489, 492, authorizing admission into the Union of the State of Alabama, provided that the convention to be called to form a state constitution should "provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare * * * that no tax shall be imposed on lands, the property of the United States". Section 2, Act No. 194, Alabama General Acts, 1935, pp. 256, 257, provides that "all property, real and personal, of the United States" shall be exempt from ad valorem taxation.

2. It is equally plain that the Alabama lien statute, section 372, did not *per se* make the lands liable for taxes. It neither fixes rates of taxation nor enumerates subjects of taxation. It does not impose taxes but secures their payment. Unless taxes are imposed, section 372 accomplishes nothing. As this Court has observed (*Heine* v. *The Levee Commissioners,* 19 Wall. 655, 659): "it is too clear for argument that taxes not assessed are no liens." Necessarily, therefore, the statute contemplates that the steps requisite to the imposition of taxes shall be undertaken, i. e., that taxes shall be levied and values shall be assessed. The declaration that the lien attaches as of October 1, when the procedure of imposing the tax commences, does not do away with the necessity of completing that procedure. Nor will it cure any defect of procedure. See e. g., *Gaston* v. *Reconstruction Finance Corporation,* 237 Ala. 111, 112 (1939); *Lewis* v. *Burch,* 215 Ala. 20, 21 (1926); *Laney* v. *Proctor,* 236 Ala. 318, 320 (1938).

The Supreme Court of Alabama has recognized that levy and assessment are indispensable to imposition of the lien declared by section 372. *In re Opinions of the Justices,* 234 Ala. 358 (1937). The occasion of the opinion was an inquiry from the governor whether section 100 of the state constitution prohibited the exemption of homesteads from state ad valorem taxes due (as were the taxes involved in the case at bar) October 1, 1937. The

exemption was granted in a statute approved February 20, 1937. However, by the terms of section 372, the taxes had been liens since October 1, 1936. Section 100 of the state constitution declares that no "obligation or liability * * * held or owned by this state * * * shall ever be remitted [or] released * * * by the legislature". The court answered that the statute constitutionally exempted homesteads from state taxes due October 1, 1937. It said (p. 363):

> This provision [section 372] for a lien, *of necessity,* is the result only after all statutory requirements of due assessment and adjudication thereon, actually or theoretically, by the reviewing boards have been had, done, or time for review has expired by the operation of law and the county tax levy has been made. *Then does the lien become fixed and final. Until this time the lien and its amount is inchoate.* [Italics added.]

Thus, the Supreme Court of Alabama does not regard section 372 as imposing a liability for taxes. Had it so construed the section, it would have been obliged to hold the exempting statute unconstitutional.

This Court has held that until by completion of levy and assessment taxes have been ascertained, the statutory declaration of a lien serves "merely as a *caveat* of a more perfect lien to come." *New York* v. *Maclay,* 288 U. S. 290, 294. In that case receivers were appointed for a corporation which

owed franchise taxes (not then assessed or liquidated) to the State of New York and income taxes to the United States. The decree of receivership gave the United States a preferred right in the corporate assets. R. S. sec. 3466, 31 U. S. C. sec. 191. After commencement of the receivership, the State assessed and liquidated the franchise taxes. It claimed that by virtue of state statutes the taxes became liens in advance for the years in which they were due "though the amount is not fixed and must be liquidated thereafter" (288 U. S. at 292). This Court rejected the contention. Speaking through Mr. Justice Cardozo, it said (pp. 292–293):

> The lien thus created [by the New York statutes] is effective for many purposes though its amount is undetermined. It is notice to mortgagees or purchasers, who are held to loan or purchase at their own risk if they take their mortgages or deeds before the tax has been assessed or paid. * * * In that respect it is similar to the lien of a transfer tax or duty upon the estate of a decedent. * * * It will even be superior, at all events after assessment * * * to mortgages already made, and will thus prevail against a purchaser who buys at a foreclosure sale. * * * All this is settled in New York by reiterated judgments.
>
> The problem here is different. To hold that a lien has progressed to such a point as to be a warning to mortgagees and purchasers of a contingent liability, like a notice of *lis*

pendens, is far from holding that while the liability is unliquidated and unknown the lien thus created is perfect and specific. By the terms of the hypothesis it is nothing of the kind. If the state were to stand upon the warning and omit to ascertain the debt, it would never be able to sell anything, for it would not know how much to sell. Against mortgagees and purchasers a lien perfected afterwards may take effect by relation as of the date of the inchoate lien through which mortgagees and purchasers became chargeable with notice. The doctrine of relation will not divest the United States of the preference that accrued when receivers were appointed.

Thus, the legislative declaration of a lien for taxes is not the equivalent of or a substitute for the imposition of the taxes. Whatever the terms of the statute declaring the lien, it is ineffective unless and until levy and assessment are completed. Hence, the lands in question were free from tax liens when acquired by the United States. Thereafter, the taxes were imposed. But, because it lacked power to impose any taxes upon the lands of the United States, the State was similarly powerless to impose tax liens upon those lands, or more precisely, to transmute what were "inchoate" into "fixed and final" charges.

3. Numerous decisions establish the correctness of the Government's contention. It has been held, precisely as the Government here contends,

that the statutory declaration of a lien for taxes imposes no liability upon property conveyed to the United States before, by completion of levy and assessment, the taxes have been ascertained. *Bannon* v. *Burnes,* 39 Fed. 892, 897, 898 (C. C. W. D. Mo. 1889); *United States* v. *Pierce County,* 193 Fed. 529, 532–533 (W. D. Wash. 1912); *Territory* v. *Perrin,* 9 Ariz. 316, 320 (1905); see also *United States* v. *City of Buffalo,* 54 F. (2d) 471, 474 (C. C. A. 2, 1931) certiorari denied, 285 U. S. 550; *United States* v. *Certain Lands in City of St. Louis, Mo.,* 29 F. Supp. 92, 96 (E. D. Mo. 1939); 3 Cooley, *Taxation* (4th ed. 1924), sec. 1232, n. 13, pp. 2454–2455; Berg, *The Status of Taxes Relative to Land Acquired by the United States,* 16 Oregon Law Review pp. 340–356 (1937); Note, 48 L. R. A. (N. S.) pp. 708–712 (1914).

United States v. *Pierce County, supra,* was a suit to cancel a purported lien for state, county, school and city taxes upon lands of the United States. A statute of Washington made the taxes liens from March 1; the lands were acquired by the United States in May and July; thereafter, in October, the taxes were levied and thus ascertained. The court entered a decree granting the relief prayed for. It said (193 Fed. at pp. 532–533):

> While I entertain no doubt that it is within the power of the state to treat the entire taxation proceeding as having been taken at some definite date, so far as concerns the

> general mass of property * * *, a different rule must apply to property which, while the taxation proceeding is still incomplete, passes under the dominion and exclusive jurisdiction of the United States. The transfer of title to the United States operates to withdraw the property from all the effects of subsequent state action and subjects it to the sole jurisdiction of the United States. As to such property all incomplete state proceedings must fall. * * * It is too plain for argument that, without an order levying the tax and fixing its rate, no tax could be enforced; and it is equally plain in this case that such order was made several months after the United States acquired this property. That order could not operate against property that had passed under the exclusive jurisdiction of the United States.[6]

Applying the same principles, other decisions hold that a declaration of lien like that of the Alabama statute imposes no liability upon property when, before ascertainment of taxes, the power to tax is lost by reason of acquisition of the property

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[6] The United States concedes that it does not have exclusive jurisdiction over the three tracts here involved. But this affords no basis for distinguishing the *Pierce County* case. The immunity of federal property from state taxation does not depend upon whether the United States possesses the exclusive jurisdiction provided in Art. I, sec. 8, cl. 17, of the Constitution. See e. g. *Van Brocklin* v. *State of Tennessee*, 117 U. S. 151, 179–180.

by a state or one of its political subdivisions, *State* v. *Snohomish County,* 71 Wash. 320, 322–326 (1912); *Portland* v. *Multnomah County,* 135 Ore. 469, 473 (1931); *City of Laurel* v. *Weems,* 100 Miss. 335, 340–341 (1911), or is lost because the property is disconnected from the territory of the taxing power, *Gillmor* v. *Dale,* 27 Utah 372, 377 (1904); *State ex rel. Hinson* v. *Nickerson,* 99 Neb. 517, 520 (1916), or because the legislature divests the taxing body of power to tax. *Denver* v. *Research Bureau,* 101 Colo. 140, 144 *et seq.* (1937).

Thus, in *State* v. *Snohomish County,* 71 Wash. 320 (1912) the state sued to cancel county tax certificates upon lands purchased by it after the statutory lien date but before the taxes were levied. The statutes involved were those dealt with in *United States* v. *Pierce County,* 193 Fed. 529, and the state court agreed with the federal court. It said (p. 323):

> * * * as the last step in the process of taxation, the board of county commissioners and other taxing authorities in October levy the tax in specific sums. Then for the first time the concept of a tax is fully realized. The fact that the lien of the tax so created is by relation attached to specific property as of the date of the initiation of the process on March 1, cannot do away with the necessity of pursuing the whole statutory proceeding before any tax is created so as to attach as a lien as of that or any date. While the state has power for the purposes

> of the lien to treat the entire proceeding as having been taken at any given time, that fact does not do away with the necessity of any step in the proceeding. It seems self-evident that there can be no valid or effective lien for a tax until there is a valid tax in some specific amount.[7]

It is submitted, therefore, that because the amounts of the taxes had not been ascertained when the United States acquired the lands, the lands were not then liable for taxes; that, since property of the United States is not subject to state taxation, the State of Alabama and its political subdivisions could not by subsequent levies and assessments impose upon the lands liability for taxes in the event that the Government's grantors could not be made to pay; and that the lien for taxes declared by section 372 of Act No.

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[7] On the other hand, the statutory lien is held effective as to property which, after the lien date but before completion of assessment and levy, is acquired by a religious body exempted from taxation. *McHenry Church* v. *McNeal*, 86 Miss. 22, 26 (1905); *The People* v. *Ladies of Loretto*, 246 Ill. 403, 405 (1910); *Board of County Com'rs* v. *Central Baptist Church*, 136 Okla. 99, 100–102 (1929). These decisions are put on the ground that the lien date fixes the taxable status and that the exemption statute, which is to be strictly construed, does not apply to property acquired after it becomes subject to taxation. In other words, the question there involved is the extent to which the State has relinquished its admitted power to tax. See *United States* v. *City of Buffalo*, 54 F. 2d 471, 474 (C. C. A. 2, 1931); *City of Laurel* v. *Weems*, 100 Miss. 335, 339–340 (1911); Berg, *The Status of Taxes Relative to Land Acquired by the United States*, 16 Oregon Law Review, pp. 340, 351–352.

194, Ala. Gen. Acts 1935, was inchoate when the United States acquired the lands and thereafter could not be perfected.

Accordingly, it is submitted that the relief prayed for in the complaint should be granted.

II

THE PROBATE COURT OF MACON COUNTY, ALABAMA, WAS WITHOUT JURISDICTION TO DECREE THAT THE LANDS OF THE UNITED STATES BE SOLD TO PAY THE TAXES

The certificates of purchase issued to the State of Alabama are void also because they resulted from judicial proceedings in which the United States was made a defendant without its consent. No suit can be brought against the United States or—what amounts to the same thing—against its property, without the consent of Congress. *The Siren,* 7 Wall. 152, 154. As this Court has recently pointed out, "A proceeding against property in which the United States has an interest is a suit against the United States." *Minnesota* v. *United States,* 305 U. S. 382, 386. Admittedly, Congress did not consent to the proceedings instituted in the Probate Court of Macon County, Alabama.

Of course, the United States was not *named* as a party defendant. Rather, as the Statement discloses (p. 5), the probate court issued orders calling upon those who had no interest in the lands, the former owners, to show cause why decrees should not be entered to sell the lands for taxes. But whether the United States is actually

sued is not determined by the nominal parties to the controversy but by the effect of the judgment which can be entered. Thus, a suit is against the United States when those named as defendants have no pecuniary interest in the matter and the United States, though not named, is the real party against which the relief is asked and the judgment will operate. *Cunningham* v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446, 457; *Hagood* v. *Southern*, 117 U. S. 52, 67–69; *Belknap* v. *Schild*, 161 U. S. 10, 21–22, 23–25; *Stanley* v. *Schwalby*, 162 U. S. 255, 272; *Minnesota* v. *Hitchcock*, 185 U. S. 373, 386–387; *Oregon* v. *Hitchcock*, 202 U. S. 60, 69–70; *Naganab* v. *Hitchcock*, 202 U. S. 473, 475–476; *Louisiana* v. *Garfield*, 211 U. S. 70, 77–78; *Goldberg* v. *Daniels*, 231 U. S. 218, 221–222; *New Mexico* v. *Lane*, 243 U. S. 52, 58. Obviously, the former owners had nothing at stake in the probate court proceedings. The United States is the party against whom the decrees operated. The validity of the asserted liens depended upon contentions that it was to the interest of the United States alone to raise. It is apparent, therefore, that the United States was the real party defendant and that, because it could not be sued, the probate court was without jurisdiction.

To summarize: The proceedings were instituted for the purpose of selling the lands to which the United States had title. As a result of the decrees entered in those proceedings, the State of

Alabama claims the title. Plainly, the proceedings by which this was accomplished were against the United States. Therefore, it is evident that the claims of the State are invalid. It goes without saying that a court which has no jurisdiction over the United States or over its property cannot divest the United States of title or transfer its property to another.

It is submitted that the certificates of purchase issued to the State of Alabama are nullities and that this Court should order them to be cancelled.[8]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a decree should be entered (1) declaring and adjudging that the 1937 tax assessments did not create a lien against the lands described in the complaint, (2) quieting plaintiff's title to said lands and declaring void the tax certificates issued

[8] It will be noted, however, that cancellation of the certificates on the ground that they resulted from judicial proceedings in which the United States was made defendant without its consent will not afford the United States the complete relief asked for in its complaint. It is necessary also that the liens be adjudged invalid. Even though unenforceable while the lands belong to the United States, the liens may continue and so be enforceable against a subsequent owner of the property. *The Siren*, 7 Wall. 152, 155, 157. So far as the Government knows, the Alabama courts have not held otherwise. Even a possibility that the liens, if valid, would be enforceable against the lands if owned by one not immune from suit would hinder a disposition of the lands by the United States and thus constitute a cloud upon its title. See *United States* v. *City of Buffalo*, 54 F. 2d 471 (C. C. A. 2, 1931).

to the defendant, (3) enjoining defendant, its officers and assigns, from asserting any claim to said lands adverse to plaintiff or its successors in title, and (4) granting such further relief as this Court may deem proper and necessary.

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MARCH 1941.

APPENDIX A

1. Act No. 194, General Acts Alabama 1935, p. 256, provides:

* * * * *

SECTION 8. There is hereby levied for the purpose and upon the property hereinafter named and not specifically exempted from taxation, annual taxes, as follows, to-wit: (a) For the maintenance of the public schools of this State, thirty cents ($.30) on each one hundred dollars ($100.00) of the assessed value of taxable property. (b) For the relief of needy Confederate soldiers and sailors, resident citizens of Alabama, and their widows, ten cents ($.10) on each hundred dollars ($100.00) of the assessed value of taxable property. (c) For the use of the State and to raise revenue therefor, twenty-five cents ($.25) on each one hundred dollars ($100.00) of the assessed value of taxable property [p. 263].

* * * * *

SECTION 11. All taxes, unless otherwise provided by law shall become due and payable on the first day of October in each year, and shall become delinquent if not paid before the first day of January succeeding, * * * [p. 267].

* * * * *

SECTION 29. The return and listing of property, for taxation by the Tax Assessor must commence on the first day of October in every year, and sh[illegible] be finished by him on the first day of [illegible]uary following; but the Assessor may be allowed through the

third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, * * * [p. 274].

* * * * *

SECTION 50. When the assessor shall have completed his work of assessing, valuing and equalizing property, which has been listed for taxation in his county and such valuation shall have been entered on the assessments lists, which shall not be later than the last Monday in February of each year, he shall certify over his signature to the correctness of the returns, showing valuations fixed by him, * * *. Such lists of property shall be by the assessor delivered to the Board of Review not later than the second Monday in March [p. 284].

* * * * *

SECTION 64. The Court of County Commissioners or other court of like jurisdiction, at the regular February term in each year, shall levy the amount of general taxes required for the expenses of the county for the current year, not to exceed one-half of one per cent of the value of the taxable property as assessed for revenue for the State as shown by the book of assessments after it shall have been corrected, and at the same time levying the amount of special taxes required for the county for the current year, which levy shall be made upon the same basis of valuation provided above and when such levy shall be made, to certify the rate or rates of taxation, and the purpose or purposes for which the tax is levied to the Tax Assessor of the County [p. 288].

* * * * *

SECTION 67. The members of the courts of county commissioners or Boards of revenue,

other than the judge of probate, of the several counties of the State, together with the tax assessor of such counties are hereby constituted a board of review, whose duty it shall be to inspect, review, revise, and fix the value of all the property returned to or listed with the tax assessor for taxation each year; * * *. The majority of the Board of Review shall constitute a quorum of such board for the performance of the duties required herein; * * * [p. 289].

* * * * *

SECTION 72. When the assessor shall have completed the assessment, valuation and equalization work in his county as provided in this Act, he shall notify each member of the Board of Review and such board shall meet on the second Monday in March and sit at the courthouse of the county from day to day until their duties are completed, which shall not be later than the first Monday in April, and shall review, revise, correct and fix the assessment values made by the tax assessor by raising or lowering the assessment of any person, partnership, corporation or association, except such assessments as have been approved by the State Tax Commission, as to any or all of the items of his assessment, in such manner as to secure the assesment of property at sixty per cent of its fair and reasonable market value. The majority of a board of review shall govern in fixing the value for assessment of all property before them for determination.

SECTION 73. It shall be the duty of the Board of Review to meet on the second Monday in March and sit as long as may be necessary to carefully examine and inspect all tax returns and assessments delivered to it by the county tax assessor. If the board

finds that any taxpayer has neglected to make a return or has omitted from his return any property that should be returned, it shall be its duty to make up a return upon the proper blank, with a description of the property to be assessed, which property it shall then proceed to value and equalize in the same manner as other property is valued and equalized by it, and to the value thus placed thereon shall be added a penalty of ten percent for failure of the owner of such property to properly return the same. * * * [p. 292].

SECTION 74. Immediately upon the completion of the work of reviewing and adjusting assessed valuations under the provisions of this Act, the tax assessor shall give notice by publication once a week for two consecutive weeks in a newspaper published in the county, and if no newspaper is published in the county, by posting notices in three public places in each precinct of the county, that the assessed valuations of all property listed for taxation have been fixed as provided by law and that the tax return list showing thereon such assessed valuations are in his office and open for public inspection, and that the Board of Review will sit at the courthouse of the county, on the first Monday in June to consider such protests as may be filed by any taxpayer as herein provided, and that any taxpayer who is not satisfied with the valuations of his property as fixed and entered on the return list as required herein, may file objections in writing to such assessed valuations with the secretary of said board, on or before the last Monday in April, and the taxpayer shall set out in such objections filed, the description of each item of property and his reason for making ob-

jections to the assessed valuation as placed thereon [pp. 292–293].

* * * * *

SECTION 214. The probate court of each county is empowered to order the sale of lands therein for the payment of taxes assessed on such lands, or against the owners thereof, when the tax collector shall report to the court that he was unable to collect the taxes assessed against such land, or any mineral, timber, or water right or special right, or easement therein, or the owner thereof, without a sale of such land [p. 351].

SECTION 215. It shall be the duty of the tax collector, at the expense of the county, to procure a substantially bound book in which he shall enter, in the manner usual in docketing causes for trial in the circuit court, each parcel of real estate, or right or interest, or easement therein, assessed to any person against whom taxes have been assessed which are not paid, when a portion of all such taxes are on such real estate, or right or interest or easement therein, describing the same in the same manner as it is described in the assessment list, and stating the amount of the unpaid taxes, penalties, fees and charges due by such person, specifying the amount due the State, and due the county, and to special tax districts, and that for fees and charges; and he shall in like manner, enter in such book each parcel of real estate, or right or interest or easement therein, which has been assessed to an "owner unknown" the amount of taxes, fees and charges due thereon, stating in each case the fact that it was so assessed * * * [pp. 351–352].

SECTION 216. * * * Such book[s] shall be delivered to the judge of probate

on or before the first day of March, but if from any cause there has been a failure to deliver the same by that time, it may be delivered thereafter [p. 352].

SECTION 217. (a) On receiving such book as speedily as practicable the Judge of Probate shall issue a notice addressed to each person against whom any unpaid taxes are assessed as shown by such book, substantially in the following form: "State of Alabama, (give name of county) county, to (give name of taxpayer): The Tax Collector has filed in my office a list of delinquent taxpayers, and of real estate upon which taxes are due. You are reported as delinquent, and your tax amounts to (here give amount of taxes) with costs added. This is to notify you to appear before the probate court of said county at the next term thereof, commencing on Monday, the —— day of ———, 19—, then and there to show cause, if any you have, why a decree for the sale of property assessed for taxation as belonging to you, should not be made for the payment of the taxes thereon, and fees and costs (Here Probate Judge's signature). Judge of Probate." Such notice must be served by the Tax Collector, or his deputy, on the person to whom it is addressed, and service of such notice may be made by handing a copy thereof to the party to whom it is addressed, or his agent, or by leaving a copy thereof at the residence or place of business of such party, or his agent, or by sending a copy of said notice to the party to whom it is addressed, by registered mail, postage prepaid, marked "for delivery only to the person to whom addressed," and return receipt demanded addressed to the Tax Collector of the county; and with his endorsement thereon, showing how and when served, show

his reason for not serving the same, it must be by the Collector, or his deputy, returned into Court on or before the first day of the next term thereof * * * [pp. 352–353].

* * * * *

SECTION 223. If service of such notice is perfected ten days before the commencement of the term to which the same is returnable, the cause shall stand for trial at such term; and if no defense is interposed or if interposed and on trial thereof the same is adjudged insufficient in law or is not sustained by the evidence adduced, the Probate Court shall make and enter on such book or docket, a decree of sale substantially in the following form: "It appearing to the Court that the taxes have been assessed against the person mentioned in this cause (or if the assessment is to owner unknown that the taxes have been assessed on real estate mentioned in this cause) to the amount of (state amount here) dollars for the year ——, and that the same are still due and unpaid; and it further appearing that notice of this proceeding has been given as required by law, and no valid defense has been interposed against the sale of such real estate for the payment of the taxes. It is therefore ordered, decreed * * * and adjudged by the Court that the State of Alabama has a lien for the payment of said amount and for the additional sum of (state amount here) dollars, for fees, charges and costs in this behalf lawfully incurred, on the following described real estate, to-wit: (Here insert description of real estate). It is further ordered, adjudged and decreed by the Court that said real estate or so much thereof as may be necessary be sold for the payment of said delinquent taxes, and of

said fees, charges and costs, and of the expenses of such sale." Such decree when entered shall be signed by the Judge of Probate and shall have, when the jurisdiction of the court is shown, the effect of judgments in other cases in courts of record [pp. 354–355].

SECTION 224. Immediately at the end of any term of court at which any decree for sales of real estate for the payment of taxes are rendered, or as soon thereafter as practicable, the tax collector shall proceed to enforce such decree by sales of real estate ordered to be sold, and to this end shall give notice for thirty days before the day of sale, by publication for three successive weeks in some newspaper published in the county, or at least three (3) weeks before the day of sale shall post a notice at the courthouse of his county, and at some public place in the precinct in which the real estate is situated, that at the time specified therein, he will proceed to sell such real estate separately, describing such portions as are embraced in each decree, and stating the amount for which each decree was rendered (without stating the items of which said decree is composed) and the person against whom the taxes embraced in such decree were assessed, or if assessed to "Owner unknown", stating that fact * * * [p. 355].

SECTION 225. Within ten days after such sale the Tax Collector shall make report of each sale to the Probate Court and praying confirmation thereof. Such report shall lie over for a period of five days for exceptions or objections thereto. If upon the expiration of five days no objections have been filed, or if in the opinion of the Court they are insufficient, and it appear-

ing to the Court that the Tax Collector sold such real estate in accordance with the law, and the decree of Court ordering such sale, the Court shall make and enter an order confirming said sale, which shall be entered on the same book or docket as the original decree of sale, and ordering the Tax Collector to issue proper certificates of purchase to the various purchasers, including the State [pp. 355–356].

* * * * *

SECTION 230. If no person shall bid for any real estate offered at such sale an amount sufficient to pay the sum specified in the decree of sale, and the costs and expenses subsequently accruing, the Judge of Probate shall bid in such real estate for the State at a price not exceeding the sum specified in such decree and such subsequently accruing cost and expenses. In no event shall the Judge of Probate bid in for the State less than the entire amount of real estate included in any assessment [pp. 356–357].

SECTION 231. As soon after the confirmation of sale is made as may be practicable, the Tax Collector must make out and deliver to each purchaser, other than the State, a certificate of purchase, which shall contain a description of the real estate sold and show that the sum was assessed by the Assessor, to whom assessed, the date of assessment for what year or years the taxes were due, the amount of taxes thereon, distinguishing the amount due the State and County, and for school purposes, and the fees and costs; that it was advertised and how long, and that it was offered for sale, and at what time, and who became the purchaser, and at what price, and the fact

and date of the confirmation of such sale [p. 357].

SECTION 232. For the real estate bid off for the State in each case the Judge of Probate shall make out a certificate of purchase to the State of like import to the one provided for in the preceding section, and deliver the same to the Tax Collector who shall, on final settlement, deliver all certificates received by him from the Judge of Probate to the State Comptroller, * * *. The Comptroller when he has settled the accounts of the Tax Collector shall deliver to the State Land Commissioner all certificates of land bid in for the State which have been accepted by him, and said Land Commissioner shall cause the same to be recorded in a book kept in his office for that purpose and properly indexed for convenient reference. Lands bid for the State shall not thereafter be assessed except as herein provided until the same have been redeemed or sold by the State [p. 357].

* * * * *

SECTION 235. The certificate of purchase delivered by the Tax Collector to the purchaser at such sale or to the State in case the State is the purchaser, is assignable in writing or by endorsement, and if the State is the purchaser such assignment shall be made by the State Land Commissioner upon the payment of the amount bid by the State, with interest thereon at the rate of six per cent per annum from the date of sale to the date of assignment, plus all taxes due on said lands since the date of sale, with interest thereon at six per cent from date of maturity. Such assignment shall vest in the assignee and his legal representatives all the right and title of the

original purchaser, or of the State in case the State is a purchaser [p. 358].

* * * * *

SECTION 251. When lands are bid in for the State at tax sales the State shall be entitled to possession of said lands immediately upon execution of the certificate of sale by the Judge of Probate. If possession be not surrendered within six months from the date of sale, after demand therefor is made by the State Land Commissioner in behalf of the State, or if the certificate has been assigned, by the assignee, then the State Land Commissioner in the name of the State or the assignee of the State, if the certificate has been assigned, may maintain an action in ejectment, unlawful detainer, or a statutory real action in the nature of ejectment, or other proper remedy for the recovery of the possession of the lands purchased at such sales, and shall be entitled to hold the possession thereof on recovery. * * * [p. 363].

* * * * *

SECTION 268. Real estate which hereafter may be sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State, or if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale by the owner, his heirs or personal representatives, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor, or other creditor having a lien thereon, or on any part thereof; * * * [pp. 368–369].

SECTION 269. (a) In order to obtain the

redemption of land from tax sales, where the same has been sold to the State, the party desiring to make such redemption shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the rate of six per cent per annum from the date of sale, together with the amount of all taxes found to be due on such lands since the date of sale; as provided herein, with interest thereon at the rate of six per cent per annum from the maturity of such taxes, and all costs and fees due to officers as set out in the following sections. (b) Upon application to the probate judge to redeem land where the same has been sold to the State for taxes, which application shall be made on blank forms furnished by the State Land Commissioner, the probate judge shall submit such application to the Tax Assessor of the county in which the land sought to be redeemed is located and the Assessor shall, without delay, enter on such application an assessment value for each of the years for which taxes are due, subsequent to the year for which such land was sold to the State for taxes, and such assessment value shall be sixty percent of the fair and reasonable market value of such lands as of October 1st of the year or years subsequent to the year for which the land was sold for taxes. (c) The redemptionor shall deposit with the probate judge the amount of money for which lands were sold for taxes plus the amount of money due for subsequent years based on the assessment value as required to be fixed in sub-section (b) of this Section and interest, cost and fees as provided in sub-section (a) of this Section [p. 369].

* * * * *

SECTION 279. * * * when three years shall have elapsed from the date of sale, such portions of lands as have not been redeemed shall be subject to sale by the State; and the State Land Commissioner with the approval of the governor, may sell the same at private sale to any purchaser, who may pay therefor in cash to the treasurer, such sum of money as the State Land Commissioner may ascertain to be sufficient to cover and satisfy all claims of the State and county, which sums shall not be less than the amount of money for which the lands were bid in by the State, with interest thereon at the rate of six per cent per annum from the date of sale, together with the amount of all taxes due on said lands since date of sale, with interest thereon at the rate of six per cent per annum from the maturity of such taxes. Provided, that if lands have not been redeemed or sold by the State five years from date of sale, such lands may be sold by the State Land Commissioner as hereinafter provided [p. 373].

* * * * * *

SECTION 281. When real estate which has heretofore been sold for taxes and bought in by the State and the period of redemption has expired the State Land Commissioner with the approval of the Governor, may sell all the right, title and interest of the State to such real estate at the best price obtainable and upon such terms as he may determine, Provided, such amount shall not be less than the taxes due thereon for a period of three years, without interest, costs or penalties. (b) Provided, However, that where real estate has been sold for taxes and bid in for the State and not redeemed within five years from date of sale the State Land Commissioner shall have the right to

sell the right, title and interest of the State to such real estate at the best price obtainable, irrespective of the amount of taxes due, and upon such terms as he may determine * * * [p. 374].

SECTION 282. When lands have been sold by the State, as provided in Sections 279 and 281, and the purchase money has been paid, the State Land Commissioner, in behalf of the State, shall execute to the purchaser a deed, duly acknowledged, without warranty or covenant of any kind on the part of the State, express or implied conveying to him all the right, title and interest of the State in and to the lands purchased by him; and such purchaser shall thereafter have all the right, title and interest of the State, in and to such lands, and shall be held, and treated as the assignee of all the taxes due upon such lands, or for which they were sold, and the penalties and all of the taxes that should have been under the law assessed upon the same, if they had been the property of a private citizen of the State, and he shall be clothed with all the rights, liens, powers and remedies, whether as a plaintiff or defendant, respecting said lands as an individual purchaser at the tax collector's sale would have in similar circumstances; and all such liens and charges as the State had before such sale by the State Land Commissioner shall be enforced in favor of such purchaser from him, as under the provisions of law relating to individual purchasers at sales by the tax collector, such purchaser on failure of his title shall have his lien and charges assessed by the court or by a jury and may foreclose the same by proceeding at law in such suit [pp. 374–375].

* * * * *

SECTION 284. Any lands which have been bid in by the State at tax sale shall, after three years have elapsed from the date of sale to the State and no person having any interest therein having redeemed same from tax sale, be subject to conveyance to the State Commission of Forestry * * * [pp. 375–376].

* * * * *

SECTION 289. The right to redeem any real estate bid in for the State shall be forfeited unless such real estate is redeemed within the time prescribed by this act, and if not redeemed within that time, all the right, title and interest of the owner of such real estate, and of the person whose duty it was to pay the taxes thereon, in and to such real estate, shall be transferred to and absolutely vested in the State [p. 377].

* * * * *

SECTION 372. From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens

may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced [p. 566].

2. Article XIV, Constitution of Alabama, provides:

SEC. 269. The several counties in this state shall have power to levy and collect a special tax (a) not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, state and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the constitution of eighteen hundred and seventy-five. The funds arising from such special school tax shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same length of time as practicable; provided, that this section shall not apply to the cities of Decatur, New Decatur, and Cullman [Code of Alabama, 1923, Vol. 1, pp. 409–410].

3. Article XIX, Constitution of Alabama, provides:

SEC. 1. The several counties in the State shall have power to levy and collect a special county tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such counties in addition to that now authorized or that may hereafter be authorized for public school purposes, and in addition to that now authorized under Section 260 [269] of Article XIV of the constitution; provided, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the county, and voted for by a majority of those voting at such election.

SEC. 2. The several school districts of any county in the State shall have power to levy and collect a special district tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such district for public school purposes; provided, that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part, or such other school districts now existing or hereafter formed as may be approved by the county board of education; provided further, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the district and voted for by a majority of those voting at such election; provided further, that no district tax shall be voted or collected except in such counties as are levying and collecting not less than a three-mill special county school tax.

SEC. 3. The funds arising from the special county school tax levied and collected by any county shall be apportioned and expended as the law may direct, and the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the district, as the law may direct. [Added by Amendment III, proclaimed November 22, 1916, Code of Alabama, 1923, Vol. 1, p. 429.]

APPENDIX B

1. Minutes of the Meeting of the Macon County Board of Revenue, February 8, 1937:

Under and by virtue of the Legislature of 1923, Revenue Laws page 93, Section 148, it is ordered that the rate of taxation promulgated for 1937 by the Board of Revenue shall be as follows:

The amount of general County taxes required for expenses of the County for the current year shall be ½ of 1% or 50 cents on each one hundred dollars, taxable property for revenue for County as shown by the books of Assessment after it shall be corrected.

Also the amount of Special taxes for County for current year 1937 shall be 2½ mills on taxable property as levied, making County rate to read 5 mills or 50 cents on each $100.00 for General County purposes and 2½ mills or 25 cents on each $100.00 for Special County tax purposes.

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2. Minutes of the Meeting of the Macon County Board of Review, March 1937.

The Board of Review of Macon County met in annual session on March 8, 1937 to examine the books of tax assessment and equalize values.

J. L. Youngblood of District 1 was again named Chairman, the other members being

I. D. Vail of District 2, A. J. Segrest of District 3, and W. A. Humphries of District 4.

After comparison of assessments with the land and lot books, all assessments in the ten beats and in the corporations were approved except 71 cases. The Assessor was instructed to put the required publication of notice to tax payers in the County paper, and the registered notices to be mailed to the property owners whose values were changed by the Board, on the forms prescribed by the State Tax Commission.

The sheets filed in alphabetical and numerical order in the prescribed book of notice to the taxpayer, and in the same order in the docket book of notice of protest to valuation and final valuation by the Board of Revenue to show the names and properties and figures of those cited.

A number of the cases cited were for the inclusion of tracts sold to U. S. Government after October 1, which the owners had desired to leave off for this tax year, but which the status on October 1 required being included in assessments for this year.

This session covered a period of two weeks, and at the conclusion of the required examination and changes in valuations, adjournment was made on March 20th.

H. E. HENDON,
Secretary.

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3. Tax Collector's Notice of Sale of Land for Taxes:

STATE OF ALABAMA
Macon County.

Under and by virtue of the decree rendered by the Probate Court of said county at the May term of said Court, I will proceed

to sell to the highest bidder for cash before the Court house door at Tuskegee, Alabama, within the legal hours of sale Monday, June the 12, 1939 the following described real estate for the taxes and costs due thereon for this year 1938, to wit:

C. C. and J. E. Bridges, SE¼ of SE¼, Sec. 35, T. 18, R. 24. SW¼ of SW¼. 10 A in W side of SE¼ of SW¼, Sec. 36, T. 18, R. 24. 1 Tenant house. E½ of NE¼, E½ of SE¼, Sec. 2, T. 17, R. 24. 174 A strip off W side of W½ lying N and S. 1 Tenant house, Sec. 1, T. 17, R. 24. Tax $51.40.

(Copy from "The Tuskegee News.")

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4. Order to Show Cause Why Property Should Not Be Sold for Taxes:

THE STATE OF ALABAMA
Macon County.

To C. C. & J. E. BRIDGES
Notasulga, Ala.

The Tax Collector has filed in my office a list of delinquent tax payers of real estate upon which taxes are due. You are reported as delinquent, and your taxes amount to $47.02 . . . with cost added. This is to notify you to appear before the Probate Court of said County at the next term thereof, commencing on Monday, the 2nd day of May 1938, then and there to show cause, if any you have why a decree for the sale of said property assessed for taxation as belonging to you should not be made for the payment of the taxes thereon,

and fees and costs. Given under my hand, this ------ day of APR. 5, 1938 ------ 19----.

WM VARNER
Judge of Probate.

Endorsed on reverse side:
I have executed notice to J. E. BRIDGES, Apr. 7/38.
By Self

A. H. HOWARD
Tax Collector.

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5. Certificate of Land Sold and Bought by the State:

The STATE OF ALABAMA,
Macon County, Office of Judge of Probate.

I, Wm. Varner, Judge of Probate of said County, hereby certify that the following real estate, lying in said County, to-wit:

SE¼ of SE¼, Sec. 35, T. 18, R. 24, SW¼ of SW¼ 10 A in W side SE¼ of SW¼, Sec. 36, T. 18, R. 24, 1 tenant house. E½ of NE¼, E½ of SE¼, Sec. 2, T. 17, R. 24, 174 A strip off W side of W½ lying N and S 1 tenant house, Sec. 1, T. 17, R. 24,

was assessed by the Tax Assessor of said County to C. C. and J. E. Bridges for the State and County Taxes for the year 1937; that the said taxes became delinquent, and an application, of which due notice was given, was regularly made to the Probate Court of said County for a decree for the sale of said land for the payment of the taxes and charges due thereon; that a decree was rendered by said Probate Court on the 16 day of May 1938, for the sale of said land as prescribed by law, and after

having given notice of sale by posting same at the court house door of said County, and in the precinct where said land lies, at least three weeks before the day of sale, or by advertisement, for three consecutive weeks in the The Tuskegee News, a newspaper published in said County, at least thirty days before the day of sale, in pursuance of said decree and notice of sale, said land was, on the 12 day of June 1939 offered for sale at public auction, at the court house of said County, between the hours of 10 a. m. and 4 p. m. of said day, and at said sale no person having bid for such land an amount sufficient to pay the taxes, cost and fees due thereon, I, as such Judge of Probate, bid in such land for the State of Alabama for the amount of such taxes, costs and fees, aggregating the sum of Fifty-eight dollars and ninety-eight cents, made up of the following items, to-wit;

State-General Tax	$5. 28	School Dis. Tax— No. —	-----
State-Soldiers' Tax	2. 11	School Dis. Tax— No. —	-----
State-School Tax	6. 33	Total County and Dis. School Taxes	14. 77
Total State Taxes	13. 72	Interest on County and Dis. School Taxes	1. 34
Interest on State Taxes	1. 23	Probate Judge's Fees	1. 00
County-General Tax	10. 55	Tax Assessor's Fees	. 50
County-Special Tax	5. 27	Tax Collector's Fees	1. 00
Total County Taxes	15. 82	Total Officers' Fees	2. 50
Interest on County Taxes	1. 44	Advertising-Cost of	8. 16
County-School Tax	$8. 44		
School Dis. Tax No. —	6. 33		

Grand Total, $58.98

Given under my hand this the 29 day of June 1939.

WM VARNER
Judge of Probate.

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Tax Collector.

The State of Alabama, Macon County. Decree. Probate Court May Term 1938.

Present, Hon. Wm. Varner, Judge of Probate.

Whereas, it appears from the delinquent tax docket delivered to the Probate Court of said County by the Tax Collector in and for said County that taxes to the amount of $44.31 have been assessed against the lands of the owner or (owner unknown), name of owner shown above, said real estate described above and marked Exhibit "A," for the year 1937;

Whereas, it appears from the certificate of the said Tax Collector that he was unable to collect the said taxes assessed against the real estate described above and marked Exhibit "A," or the owner thereof, without a sale of the said lands;

It Is Therefore Ordered, Adjudged and Decreed by the Court that the 2 day of May 1938, be and the same is hereby set as the day to hear the said cause, being the first day of the May term of said Court, and that notice be given the said owner (or owner unknown), as shown above, of this proceeding and the day set to hear the same, and that said notice be served and perfected ten days before the first day of said term.

Done this the 5 day of Apr. 1938.

Wm. Varner, *Judge of Probate.*

Notice Issued By Judge of Probate

This 5 day of April 1938.

Wm. Varner, *Judge of Probate.*

I have executed Notice to above.
By Self.
For 15 days before this day dated June 12, 193....
A. H. Howard, *Tax Collector.*

The State of Alabama, Macon County. Probate Court ..... Term 193....

Present, The Honorable Wm. Varner, Judge.

It appearing to the Court that taxes have been assessed against the person mentioned in this cause (or, if the assessment is to an "owner unknown" that taxes have been assessed on the real estate mentioned in this cause), to the amount of Forty-four & 31/100 Dollars for the year 1937 and that the same are still due and unpaid; and it further appearing that notice of this proceeding has been given as required by law, and no valid defense has been interposed against the sale of such real estate for the payment of said taxes. It is, therefore, ordered, decreed and adjudged by the Court, that the State of Alabama, has a lien for the payment of said amount and for the additional sum of Ten & 66/100 Dollars for fees, charges and costs in this behalf lawfully incurred on the described real estate, to-wit: hereon above described which is marked Exhibit "A," and made a part hereof the same as if written herein.

It is further ordered, adjudged and decreed by the Court that said real estate, or so much thereof as may be necessary, be sold for the payment of said delinquent taxes, and of said fees, charges and costs, and of the expenses of such sale.

Done this the 16 day of May 1938. Wm. Varner, *Judge of Probate.*

Sale cont'd to Aug. 1, 1938. Aug. 1, 1938, sale cont'd

To The Hon. Probate Court:

I, A. H. Howard, Tax Collector, respectfully certify and report.

That after giving notice for thirty days by publication for three successive weeks in Tuskegee News a newspaper published in this County as provided for by law, I on the 12 day of June 1939 within the hours of legal sale in front of the door of the Court House of this County did in accordance with the law and decree of this Court sell at public outcry the lands described and ordered to be sold and at this sale State of Alabama became the purchaser at and for the sum of $58.98.

That all notices required by law were given and said sale was regular in all respects.

Wherefor, I pray a Confirmation of this sale.

This the 12 day of June 1939.

A. H. Howard, *Tax Collector.*

It is ordered that the report of sale of the Tax Collector lie over for a period of five days for exceptions or objections thereto.

This the 16 day of June 1939.

Wm. Varner, *Judge of Probate.*

The State of Alabama, Macon County. Probate Court June Term 1939.

It appearing to the satisfaction of the Court that the Tax Collector did on the 12 day of June, 1939, make the sale, ordered, adjudged and decreed in this cause and that The State of Alabama became the purchaser at said sale. The property sold for the sum of Fifty-eight & 98/100 Dollars. And it appearing to the satisfaction of the Court that the Tax Collector within ten days thereafter did make a report of said sale to this Court and prayed confirmation thereof and that said report did lie over for a period of five days for exceptions or objections thereto and that upon the expiration of said five days no objections were filed thereto. And it further appearing to the satisfaction of the Court that the Tax Collector sold said real estate in accordance with the law and the decree of this Court ordering such sale.

It is therefore ordered, adjudged and decreed that said sale be and is hereby confirmed and the Tax Collector or Probate Judge be and is hereby ordered to issue proper certificates of purchase to the purchaser.

Done this the 27 day of June 1939.

Wm. Varner, *Judge of Probate.*

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TABLE OF AUTHORITIES

Cases:	Page
Clallam County v. *United States*, 263 U. S. 341	3
Fox Film Corp. v. *Doyal*, 286 U. S. 123	2
Lee v. *Osceola Imp. Dist.*, 268 U. S. 643	3
Utah Power & Light Co. v. *United States*, 243 U. S. 389	3
Van Brocklin v. *State of Tennessee*, 117 U. S. 151	3
Witherspoon v. *Duncan*, 4 Wall. 210	3

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 12, ORIGINAL

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

THE STATE OF ALABAMA

REPLY BRIEF FOR THE UNITED STATES

The State concedes (p. 35) that the tax sales were invalid.

There remains the question whether the lands were subject to a lien for taxes. The United States has pointed out (p. 10) and the State concedes (see e. g. pp. 2, 4, 8, 20–26, 28) that, when the three tracts were acquired, the taxes were still unascertained. Consequently, as the United States argues (p. 10), no taxes had been imposed when it acquired the lands. The State does not contend otherwise. On this point, the United States concludes (p. 11) that, since its property is not subject to state taxation, the State could not levy and

assess for the purpose of taxing the United States or of making the lands primarily or secondarily liable for the taxes. We do not understand the State to take issue with that conclusion.[1]

The United States then shows (p. 12) that the State's lien statute does not do away with the necessity of imposing taxes, i. e., levying taxes and assessing values. This the State does not deny. And, as the United States demonstrates (pp. 12–15), the lien is therefore necessarily inchoate until the taxes are imposed. The State recognizes this (pp. 21, 32, 34a). The Government concludes (p. 15) that "because it lacked power to impose any taxes upon the lands of the United States, the State was similarly powerless to impose tax liens upon those lands or, more precisely, to transmute what were 'inchoate' into 'fixed and final' charges." With this conclusion the State takes issue.

The opposing contention of the State (pp. 19–33, 37) is that, notwithstanding the taxes were not imposed and the liens were consequently inchoate, the lands were liable because, as it reads its statutes and decisions, the legislature intended to make

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[1] However, the State seems to suggest (p. 33) that the federal immunity from state taxation relieves only from "undue" burdens imposed by the State. The suggestion is unwarranted. The immunity of the United States from taxes imposed upon it by a State "is absolute, resting upon an 'entire absence of power.'" See *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 128.

them liable. Whether the state statute purports to impose a lien for taxes is, of course, a question to be determined by its terms and the decisions of the Alabama courts construing it. That question does not exist here. Unquestionably, section 372 purports to impose a lien as of October 1, 1936. But this fact is but the beginning of the inquiry, not its end.

Thus, the sole question presented by the State's contention is whether, *since the State of Alabama chooses to do so,* it may subject the property of the United States to a liability for state and county taxes. The obvious answer is that it may not. Whether the property of the United States shall be taxed under the laws of a State "depends upon the will of its owner, the United States, and no State can tax the property of the United States without their consent." *Van Brocklin* v. *State of Tennessee,* 117 U. S. 151, 175, 180; *Witherspoon* v. *Duncan,* 4 Wall. 210; *Clallam County* v. *United States,* 263 U. S. 341, 345; *Lee* v. *Osceola Imp. Dist.,* 268 U. S. 643, 645; *Utah Power & Light Co.* v. *United States,* 243 U. S. 389.

We are, therefore, remitted to the reasons upon which the United States has contended that there was no liability for taxes when it acquired the lands and that subsequent imposition of such liability would amount to a tax upon the property of the United States. For the reasons given

and upon the authority of the cases cited, it is submitted that the liens are invalid and clouds upon the titles of the United States.

Respectfully,

ROBERT H. JACKSON,
Attorney General.

FRANCIS BIDDLE,
Solicitor General.

NORMAN M. LITTELL,
Assistant Attorney General.

APRIL 1941.

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Supreme Court of the United States

OCTOBER TERM, 1940

NO. 12,—ORIGINAL

THE UNITED STATES OF AMERICA
Plaintiff,

vs.

THE STATE OF ALABAMA,
Defendant,

ANSWER TO COMPLAINT

THOMAS S. LAWSON,
Attorney General,
State of Alabama.

JOHN W. LAPSLEY,
Assistant Attorney General,
State of Alabama.

J. EDWARD THORNTON,
Assistant Attorney General,
State of Alabama,
Of Counsel.

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ANSWER TO COMPLAINT

In answer to the Complaint filed in this cause by the United States of America, the State of Alabama, by its Attorney General, presents the following defenses:

FIRST DEFENSE

The Complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

Without waiving the first defense, but in addition thereto, and in answer to the allegations contained in said Complaint, the defendant says:

1. Answering the allegations of fact contained in the paragraph numbered I of said Complaint, defendant admits that the plaintiff is in possession of the several tracts or parcels of land situated in the County of Macon, State of Alabama, more particularly described therein, and that said tracts or parcels of land were conveyed to the plaintiff on the dates and by deeds executed by the respective grant-

ors mentioned in said complaint. Each of the deeds conveying said lands to plaintiff contained general covenants of warranty on behalf of the grantors therein. The defendant, however, denies that the plaintiff is the owner of said several tracts or parcels of land, and alleges that the title acquired by plaintiff to said lands was subject to the lien of defendant for *ad valorem* taxes thereon for the tax year commencing October 1, 1936, and ending September 30, 1937, which lien was enforced for the non-payment of said taxes as hereinafter more particularly set forth.

2. Answering the allegations of fact contained in the paragraph numbered II of said Complaint, defendant alleges that at the time of the execution of said several deeds to the plaintiff the amount of state and coutny taxes upon said lands for the current tax year, namely: commencing on October 1, 1936, and ending September 30, 1937, had not been finally ascertained or determined, but defendant alleges that on October 1, 1936, each of said tracts or parcels of land was subject to state and county *ad valorem* taxes for said tax year; and on such date, October 1, 1936, said tracts or parcels of land became subject to a lien thereon, as provided by Section 372 of the General Revenue Act of Alabama, approved July 10, 1935, (General Acts of Alabama, Regular Session 1935, pp. 256, 566), to secure the payment of *ad valorem* taxes thereon for said year. Thereafter, during said tax year, as provided by law, said lands were duly returned by or on behalf of said above mentioned grantors, as the respective owners thereof on October 1, 1936,

for purposes of the assessment of said lands for *ad valorem* taxes thereon for said tax year, and said tracts or parcels of land were duly and regularly assessed for *ad valorem* taxes against said several owners as taxpayers for said tax year. Thereafter, on January 1, 1938, the amount of said taxes due by said taxpayers on said lands became delinquent, and on, to wit: the 16th day of May, 1938, and the 12th day of June, 1938, respectively, after the service of notice thereof upon each of said taxpayers, as provided by law, decrees were duly entered against each of said taxpayers in the Probate Court of Macon County, Alabama, for the sale of said lands for the payment of such taxes, together with fees and costs. On, to wit: the 12th day of June, 1939, pursuant to said several decrees, said lands were offered for sale, and as authorized and provided by law, the State of Alabama became the purchaser of said lands at such tax sales; and thereafter on, to wit: the 29th day of June, 1939, a certificate of purchase for each said tract or parcel of land was duly issued to the defendant as the purchaser thereof at said sale, which certificates have not been assigned but are still held and owned by defendant. Said lands have not been redeemed from said tax sales, and defendant as such purchaser claims to own all of the right, title, interest and estate owned by the several taxpayers in and to said lands on October 1, 1936, subject to the right of redemption of said lands from said tax sales, as provided by the statutes of Alabama.

3. Defendant admits the allegations of fact contained in the paragraph numbered III of said Complaint.

4. Answering the allegations of fact contained in the paragraph numbered IV of said Complaint, defendant denies that its said title or claim to said lands constitutes a cloud upon the title or claim of the plaintiff to said lands, and defendant alleges that its said title or claim to said lands is superior to any title, interest or claim of the plaintiff therein or thereto.

5. Defendant denies the allegations of fact contained in the paragraph numbered V of said Complaint, and alleges that the plaintiff is entitled to redeem said lands from the above mentioned tax sales, and that the plaintiff has an adequate remedy at law against said several grantors, for the breach of the covenants of warranty contained in said deeds to plaintiff, to reimburse the plaintiff for the amounts which may be required to be paid by it for the redemption of said lands from said tax sales, or for the payment of said taxes thereon for said tax year.

6. Answering paragraph numbered VI of said Complaint, defendant denies that its said claims to an interest in said lands, by virtue of said tax liens and sales, or as resulting from the hereinabove mentioned judicial proceedings are invalid as an attempt to tax property belonging to the United States; and defendant denies that the hereinabove mentioned judicial proceedings for the sale of said lands for the payment of said taxes and in the enforcement of said liens therefor, as to the interest acquired by plaintiff in said land, was unconstitutional or invalid, or that the plaintiff

was made or attempted to be made a party defendant in such judicial proceedings.

If defendant is mistaken in alleging that said judicial proceedings for the sale of said lands and said sales made pursuant thereto were valid, the defendant alleges that it has valid liens upon said lands for said state and county taxes thereon for said tax year commencing October 1, 1936, and ending September 30, 1937, and, in equity, is entitled to the enforcement of said liens in such manner and form as may be provided by law, or as may be required or provided by this Court in this cause.

THOMAS S. LAWSON,
Attorney General,
State of Alabama.

JOHN W. LAPSLEY,
Assistant Attorney General,
State of Alabama.

J. EDWARD THORNTON,
Assistant Attorney General,
State of Alabama,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 12, Original

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE STATE OF ALABAMA.

RETURN TO THE RULE TO SHOW CAUSE.

THOMAS S. LAWSON,
Attorney General,
State of Alabama.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. —, Original

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Complainant,

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THE STATE OF ALABAMA.

RETURN TO THE RULE TO SHOW CAUSE.

The State of Alabama, by its Attorney General, in response to the rule to show cause why leave should not be granted to the United States of America to file a bill of complaint in this Court against it, which said rule was issued by this Court on the twenty-fifth day of November, A. D. 1940, returnable on or before the sixth day of January, A. D. 1941, suggests the objections, separately and severally, hereinafter set out, why leave should not be granted to the United States of America in this case to file the said bill of complaint in this Court, viz.:

1. This action seeks to obtain a construction of the revenue laws of the State of Alabama in this Court, which laws have heretofore been construed by the Supreme Court of Alabama.

2. This action seeks to obtain a construction of the revenue laws of the State of Alabama in this Court without showing any necessity for the exercise of the original jurisdiction of this Court.

3. This action seeks to obtain a construction of the revenue laws of the State of Alabama in this Court without showing that there are no adequate or available remedies under the statutes or laws of the State of Alabama whereby the said revenue laws of said State can be construed.

4. Adequate and available remedies are open to the United States of America under the statutes and laws of the State of Alabama whereby the revenue laws of said State can be construed without the necessity of the exercise of original jurisdiction by this Court in this case.

5. It appears from the allegations of the proposed bill of complaint that the United States of America is not entitled to the relief prayed.

6. It appears from the allegations of the proposed bill of complaint that the State of Alabama has a lien on the properties involved for the *ad valorem* real estate taxes for the tax year commencing October 1, 1936, and ending September 30, 1937, which lien attached October 1, 1936, at a time prior to the acquisition of said properties by the United States of America, and that said lien has not been discharged by payment or otherwise.

7. It appears from the allegations of the proposed bill of complaint that the State of Alabama has a lien on the properties involved for *ad valorem* real estate taxes for the tax year commencing October 1, 1936, and ending September 30, 1937, which lien attached October 1, 1936, at a time prior to the acquisition of said properties by the United States of America, and that said lien was properly enforced

under the statutes and laws of the State of Alabama by a sale of said properties for said taxes.

8. It appears from the allegations of the proposed bill of complaint that under the statutes and laws of the State of Alabama, that said State rightfully claims the right to the possession of said properties in consequence of said sale for said taxes.

9. This action seeks to make the State of Alabama a defendant in a court of equity contrary to and in violation of the provisions of Article I, Section 14 of the Constitution of Alabama of 1901.

THOMAS S. LAWSON,
Attorney General,
State of Alabama.

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SUPREME COURT OF THE UNITED STATES

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BRIEF AND ARGUMENT IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT.

THOMAS S. LAWSON,
Attorney General,
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INDEX.

Subject Index.

	Page
Statement of case	1
Summary of argument	3
Argument	7
I. Original jurisdiction should not be exercised by this Court in this case to construe the revenue laws of another sovereignty	37
II. Original jurisdiction should not be exercised by this Court in this case since there is another forum available to the parties	4, 11
III. Original jurisdiction should not be exercised by this Court in this case for the complainant is not entitled to relief under the bill of complaint	5, 15
IV. Original jurisdiction cannot be exercised by this Court in this case to make the State of Alabama a defendant	6, 20
Conclusion	21
Appendix—Constitution of United States:	
Article III, Section 2, Clauses 1 and 2	23
Constitution of Alabama of 1901:	
Article I, Section 14	23
Article IV, Section 100	23
Article XIV, Section 269	24
Amendment III	24
Code of Alabama of 1923—Section 213 amended by the Act approved April 21, 1936, Gen. Acts of Alabama, Ex. Sess. 1936, p. 217	25
Revenue Laws of Alabama of 1935	26

Table of Cases Cited.

Alabama v. *Arizona*, 291 U. S. 286 ..... 2, 3, 4, 5, 8, 11, 15
Alabama Industrial School v. *Adler*, 144 Ala. 555 .... 6, 21

	Page
Alabama Industrial School v. *Reynolds*, 143 Ala. 579	6, 21
Alexander v. *Board of Revenue*, 219 Ala. 110	19
Allred v. *Dunn*, 207 Ala. 469	5, 13
Arkansas Bldg. Assn. v. *Madden*, 175 U. S. 269	12
Bains Bros. Inv. Co. v. *Purdie*, 180 Ala. 333	6, 17
Burnrite Coal Co. v. *Riggs*, 274 U. S. 208	8
Canada Malting Co., Ltd., v. *Paterson Steamships, Ltd.*, 285 U. S. 413	8
Castillo v. *McConnico*, 168 U. S. 674	15
Charter Shipping Co., Ltd., v. *Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515	8
Chicago, Milwaukee & St. P. R. R. Co. v. *Risty*, 276 U. S. 567	12
Cuba R. R. Co. v. *Crosby*, 222 U. S. 473	8
Douglas v. *New York, N. H. & H. Ry.*, 279 U. S. 377	8
Driggers v. *Cassady*, 71 Ala. 529	6, 17
Dunn Construction Co. v. *State Board of Adjustment*, 234 Ala. 372	6, 21
Erie R. Co. v. *Tompkins*, 304 U. S. 64	15
Farncomb v. *Denver*, 252 U. S. 7	12
First National Bank v. *Weld County*, 264 U. S. 450	5, 12
Florida v. *Mellon*, 273 U. S. 12	4, 8
Frost v. *State ex rel. Clements*, 153 Ala. 654	16
Games v. *Stiles*, 14 Peters 322	15
Georgia v. *Tennessee Copper Co.*, 206 U. S. 230	8
Gorham Mfg. Co. v. *Tax Commission*, 266 U. S. 265	12
Hawks v. *Hamil*, 288 U. S. 52	9
Henderson v. *Simmons*, 234 Ala. 329	6, 17
Henrietta Mills v. *Rutherford County*, 281 U. S. 121	13
Indiana Mfg. Co. v. *Koehne*, 188 U. S. 681	12
Kansas City Southern Ry. v. *United States*, 282 U. S. 760	8
Kuhl v. *Long*, 102 Ala. 563	6, 17
Langnes v. *Green*, 282 U. S. 531	8
Massachusetts v. *Mellon*, 262 U. S. 447	4, 8
Massachusetts v. *Missouri*, 308 U. S. 1	4, 9, 11
Matthews v. *Rodgers*, 284 U. S. 521	5, 13
McGregor v. *Hogan*, 263 U. S. 234	12

Page

Missouri v. *Illinois & Chicago District*, 180 U. S. 208 ..... 4, 8
Monaco v. *Mississippi*, 292 U. S. 313 ..... 6, 21
Moore v. *Mitchell*, 281 U. S. 18 ..... 4, 9
Natural Gas Co. v. *Slattery*, 302 U. S. 300 ..... 5, 12
North Dakota v. *Minnesota*, 263 U. S. 365 ..... 4, 9
Oklahoma v. *Texas*, 258 U. S. 574 8
Pennsylvania v. *Williams*, 294 U. S. 176 ..... 4, 12
Perry County v. *Railroad Company*, 58 Ala. 546 2
Petersen Baking Co. v. *Bryan*, 290 U. S. 570 12
Pierson v. *Phillips*, 214 Ala. 88 3
Pratt v. *Dean*, 246 Mass. 300 ..... 4, 9
Pullman Car & Mfg. Co. v. *Hamilton*, 229 Ala. 184 .. 5, 13
Porter v. *Investors Syndicate*, 286 U. S. 461 12
Raisler v. *Mayor & Council of Athens*, 66 Ala. 194 ... 5, 13
Rodgers v. *Gaines*, 73 Ala. 218 ..... 6, 17
Rogers v. *Guaranty Trust Co.*, 288 U. S. 123 8
Singer Sewing Mach. Co. v. *Benedict*, 229 U. S. 481 .. 13
Slaten v. *Mexican National N. R. Co.*, 194 U. S. 120 8
State v. *Alabama Educational Foundation*, 231 Ala. 11 ..... 6, 17
State Docks Commission v. *Barnes*, 225 Ala. 403 .... 6, 21
State Tax Commission v. *Commercial Realty* Co., 236 Ala. 358 ..... 6, 17
Stratton v. *St. Louis S. W. Ry.*, 284 U. S. 530 13
Swan & Billups v. *State*, 77 Ala. 545 ..... 6, 16

STATUTES CITED.

Code of Alabama of 1923, Section 213 25
Constitution of Alabama of 1901:
Art. I, Section 14 ..... 6, 14, 20, 23
Art. IV, Section 100 ..... 18, 19, 23
Art. XIV, Section 269 ..... 2, 24
Amendment III 2, 3, 24
Constitution of the United States:
Art. III, Section 2 ..... 4, 7
Amendment XI 14
General Acts of Alabama, Ex. Sess. 1936, p. 217 2

Revenue Laws of Alabama of 1935: Page
Section 8 (General Acts of Alabama of 1935, p. 263) 2
Section 29, 30, 31, 32 (General Acts of Alabama of 1935, pp. 274-275) 7
Section 42 (General Acts of Alabama of 1935, pp. 279, 280) 7, 28
Section 64 (General Acts of Alabama of 1935, p. 288) 29
Section 237 (General Acts of Alabama of 1935, pp. 358, 359) 5, 14, 29
Section 251 (General Acts of Alabama of 1935, p. 363) 5, 14, 30
Section 296-299 (General Acts of Alabama of 1935, p. 379) 5, 13, 30
Section 372 (General Acts of Alabama of 1935, p. 566) 5, 16, 31

OTHER AUTHORITIES CITED.

Biennial Report of Attorney General of Alabama, 1936-1938, p. 724 6
Opinion of Justices, 234 Ala. 358 (1937) 6, 18
Restatement of Conflicts of Law (1934), Section 610(c) 4, 9

SUPREME COURT OF THE UNITED STATES

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THE STATE OF ALABAMA.

BRIEF AND ARGUMENT IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT.

Statement of Case.

The statement in support of motion for leave to file the bill of complaint appearing on pages 2 and 3 of the motion for leave to file complaint and complaint submitted by the United States of America in this cause is substantially a correct statement of this case and for that reason statement of the case is not made here. There are additional provisions relating to *ad valorem* real estate taxes which we believe should be set out, however.

In the State of Alabama the Supreme Court has recognized the distinction between fixing the rate of taxation, and fixing the value of property for purposes of taxation.

The fixing of the rate is designated the "levy" of the tax, an exercise of the legislative function; and the fixing of the value of the property for purposes of taxation is designated the "assessment", an exercise of a quasi-judicial function. See *Perry County* v. *Railroad Company*, 58 Ala. 546, 559 (1877).

The levy of the *ad valorem* real estate tax for State purposes is made by the legislature (Gen. Acts Alabama, 1935, pp. 256, 263, Sec. 8).[1] The levy for general county purposes is made by the court of county commissioners (*op. cit.*, p. 288, Sec. 64).[2] There is an additional levy available for the county under Section 213 of the Code of Alabama of 1923, as amended by an Act approved April 21, 1936 (Gen. Acts of Alabama, Ex. Sess. 1936, p. 217).[3] As a matter of fact Macon County, Alabama, is and has been levying the additional one-fourth of one percentum authorized under this provision for the construction and maintenance of roads and bridges for many years, including the tax year commencing October 1, 1936, and ending September 30, 1937.

In addition to these taxes there are special school taxes authorized under the provisions of Art. XIV, Section 269 of the Constitution of Alabama of 1901,[4] and Amendment III to this Constitution (see Vol. 1, Code of Alabama, 1923, p. 429).[5] These special school taxes are authorized only by elections for the voters of the county.

The Supreme Court of Alabama has held that these school taxes may be levied as late as September 21 for the current tax year expiring on September 30 of the same year, though the tax is imposed on property assessed as of October 1 of the preceding year. *Alexander* v. *Board of*

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[1] Appendix page 26.
[2] Appendix page 29.
[3] Appendix page 25.
[4] Appendix page 24.
[5] Appendix page 24.

Revenue, 219 Ala. 110 (1929). See also *Pierson* v. *Phillips,* 214 Ala. 88 (1925).

Though it does not appear in the statement in support of motion or in the proposed bill of complaint in this case the one mill county school tax authorized by section 269 of the Constitution and the three mill county and three mill district tax authorized by Amendment III to the Constitution levied on the properties involved in this case for the tax year commencing October 1, 1936 and ending September 30, 1937, were authorized by an election held on June 14, 1937.

Hence, in Alabama it is not an uncommon occurrence for the taxes to be levied during the tax year at a much later date than the tax day.

The question for consideration by this Court is whether leave should be granted to the United States of America to file a bill of complaint in this Court to quiet title to certain real estate in Macon County, Alabama, against the State of Alabama, concerning certain purported sales of said real estate to the State of Alabama for the purpose of enforcing tax liens alleged to have attached to said real estate prior to the date said real estate was purchased by the United States of America. It is our contention that such leave should not be granted and in support of this contention the propositions of law hereinafter set out with the authorities cited thereunder, are maintained:

Summary of Argument.

I.

Original Jurisdiction Should Not Be Exercised by This Court in This Case to Construe the Revenue Laws of Another Sovereignty.

A. This case involves a construction of Sections 8, 29, 30, 32, 42, 64, 372 and others of the Revenue Laws of Ala-

bama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 263, 274, 275, 279, 280, 288, 566).

B. The original jurisdiction of this Court cannot be claimed as a matter of right merely because a State is a party to the proceedings.

Art. III, Section 2, Federal Constitution;
United States v. *West Virginia*, 295 U. S. 463 (1935);
Missouri v. *Illinois & Chicago District*, 180 U. S. 208 (1901);
Wisconsin v. *Pelican Insurance Co.*, 127 U. S. 265 (1888);
Massachusetts v. *Mellon*, 262 U. S. 447 (1923);
Florida v. *Mellon*, 273 U. S. 12 (1927);
Alabama v. *Arizona*, 291 U. S. 286 (1934).

See *North Dakota* v. *Minnesota*, 263 U. S. 365, 373 (1923).

C. Revenue laws of one sovereignty will not be construed by the courts of another.

Pratt v. *Dean*, 246 Mass. 300 (1923).

See Restatement of Conflicts of Laws (1934), Section 610 (c);
Moore v. *Mitchell*, 281 U. S. 18 (1930);
Massachusetts v. *Missouri*, 308 U. S. 1 (1939).

Cf. *Texas* v. *Florida*, 306 U. S. 398 (1939).

II.

Original Jurisdiction Should Not Be Exercised by This Court in This Case Since There Is Another Forum Available to the Parties.

Massachusetts v. *Missouri*, 308 U. S. 1, 19 (1939);
Alabama v. *Arizona*, 291 U. S. 286, 291 (1934);
Dissenting opinion in *Texas* v. *Florida*, 306 U. S. 398, 428 (1939);
Pennsylvania v. *Williams*, 294 U. S. 176, 185 (1935).

Cf. First National Bank v. *Weld County*, 264 U. S. 450 (1924);
Natural Gas Co. v. *Slattery*, 302 U. S. 300 (1937);
Matthews v. *Rodgers*, 284 U. S. 521 (1932).

A. The United States had an adequate remedy in the courts of the State of Alabama.

Wiley v. *Parmer*, 14 Ala. 627 (1848);
Raisler v. *Mayor & Council of Athens*, 66 Ala. 194 (1880);
Ward v. *First National Bank of Hartford*, 225 Ala. 10 (1932);
Pullman Car & Mfg. Co. v. *Hamilton*, 229 Ala. 184 (1934).

See *Allred* v. *Dunn*, 207 Ala. 469 (1922).

Sections 296-299, Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 279);
Section 237, Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 358, 359).

B. A judicial proceeding is now available in the courts of Alabama to settle the questions here raised.

Section 251, Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 363).

III.

Original Jurisdiction Should Not Be Exercised By This Court in This Case for the Complainant is not Entitled to Relief Under the Proposed Bill of Complaint.

Alabama v. *Arizona*, 291 U. S. 286, 291 (1934).

A. The lien for taxes attaches to the property subject to taxation at the commencement of the tax year in Alabama which can be discharged only by payment.

Section 372 Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 566);

Swann & Billups v. *State*, 77 Ala. 545 (1884);
Driggers v. *Cassady*, 71 Ala. 529 (1882);
Rodgers v. *Gaines*, 73 Ala. 218 (1882);
Kuhl v. *Long*, 102 Ala. 563 (1893);

Biennial Report Attorney General Alabama 1936-1938, p. 724. (Same opinion in Quarterly Report, Attorney General Alabama Vol. XII, July-September 1938, p. 78).

See *Yarbrough Bros. Hardware Co.* v. *Phillips*, 209 Ala. 341 (1923);
Frost v. *State ex rel Clements*, 153 Ala. 654, 665 (1907);
Bains Bros. Inv. Co. v. *Purdie*, 180 Ala. 333, 337, 338 (1912);
State v. *Alabama Educational Foundation*, 231 Ala. 11, 16 (1935);
Cf. Henderson v. *Simmons*, 234 Ala. 329, 331, 332 (1937);
State Tax Commission v. *Commercial Realty Co.*, 236 Ala. 358, 361 (1938);
Union Bank & Trust Co. v. *Phelps*, 228 Ala. 236 (1934);
Opinion of Justices, 234 Ala. 358 (1937).

IV.

Original Jurisdiction Cannot Be Exercised By This Court in This Case to Make the State of Alabama a Defendant.

Art. I Section 14 Constitution of Alabama of 1901;
Alabama Industrial School v. *Reynolds*, 143 Ala. 579 (1904);
Alabama Industrial School v. *Addler*, 144 Ala. 555 (1905);
State Docks Commission v. *Barnes*, 225 Ala. 403 (1932);
Dunn Construction Co. v. *State Board of Adjustment*, 234 Ala. 372 (1937);
Cf. United States v. *Texas*, 143 U. S. 621 (1892);
Monaco v. *Mississippi*, 292 U. S. 313 (1934).

ARGUMENT.

I.

Original Jurisdiction Should Not be Exercised by This Court in This Case to Construe the Revenue Laws of Another Sovereignty.

The argument under this Proposition is addressed to ground numbered I of the Return to the Rule to Show Cause.

It appears from the Statement in Support of Motion for leave to file the Bill of Complaint and from the Bill of Complaint that the question for decision in the case is the effect of the section of the revenue laws of the State of Alabama granting a lien for *ad valorem* real estate taxes, namely section 372 of the Revenue Laws of 1935 (General Acts of Alabama, p. 256, 566).[6] This lien arises from and after the first day of October of each year when such property becomes assessable. Real estate is assessable in Alabama as of the first day of October of each year (*op. cit.* p. 275, Sec. 31, see also pp. 274, 275, 279, 280, Sec. 29, 30, 32, 42).[7]

These sections of the Revenue Laws of Alabama along with the other sections relating to the levy, assessment, and collection of *ad valorem* real estate taxes must be considered and construed by this Court if this Bill of Complaint is filed. Furthermore, there is no question of law involved in the case arising under the Constitution of the United States or laws of Congress. The sole question for decision is a proper construction of the revenue laws of the State of Alabama.

The original jurisdiction of this Court is, no doubt, sought under the provisions of Art. III, Section 2, clause 2,[8] of the Federal Constitution which extends the original jurisdiction of this Court to cases in which a State is a

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[6] Appendix pages 31-32.
[7] Appendix pages 26-29.
[8] Appendix page 23.

party. See *Oklahoma* v. *Texas*, 258 U. S. 574, 581 (1922), and cases cited there. The fact that the United States is a party is not sufficient to give this Court original jurisdiction of a case. *United States* v. *West Virginia*, 295 U. S. 463, 470 (1935).

Furthermore, the fact that a State is a party does not compel this Court to entertain all actions involving such States. See *Missouri* v. *Illinois & Chicago District*, 180 U. S. 208, 239, 240 (1901). *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 287 (1888).[9] The suit must present a "case" or "controversy" within the meaning of the first clause of Art. III, section 2, of the Constitution.

Massachusetts v. *Mellon*, 262 U. S. 447 (1923);
Florida v. *Mellon*, 273 U. S. 12 (1927);
Alabama v. *Arizona*, 291 U. S. 286 (1934);
United States v. *West Virginia*, 295 U. S. 463 (1935).

Not every matter sufficient to warrant a resort to the judiciary by one person against another will justify a resort to the original jurisdiction of this Court by a State.

Alabama v. *Arizona*, 291 U. S. 286, 292 (1934).

See also

Georgia v. *Tennessee Copper Co.*, 206 U. S. 230, 237, 238 (1907).

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[9] This self restraint placed on the jurisdiction of the courts is further evidenced by cases within the appellate jurisdiction of this Court. Hence, jurisdiction has been foregone in cases involving corporate reorganizations in the courts of foreign states. *Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123 (1933). See *Burnrite Coal Co.* v. *Riggs*, 274 U. S. 208 (1927); admiralty cases involving foreigners, *Charter Shipping Co. Ltd.* v. *Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515 (1930); *Langnes* v. *Green*, 282 U. S. 531 (1931); *Canada Malting Co. Ltd.* v. *Paterson Steamships, Ltd.*, 285 U. S. 413 (1932). Torts committed in other jurisdictions, *Slaten* v. *Mexican National N. R. Co.*, 194 U. S. 120 (1904); *Cuba R. R. Co.* v. *Crosby*, 222 U. S. 473 (1912). Where other courts have taken jurisdiction, *Kansas City Southern Ry.* v. *United States*, 282 U. S. 760 (1931); *Cf. Douglas* v. *New York N. H. & H. Ry.*, 279 U. S. 377 (1929).

In discussing controversies between States, Mr. Chief Justice Taft in *North Dakota* v. *Minnesota*, 263 U. S. 365, 373 (1923), said:

> "The jurisdiction is therefore limited generally to disputes which, between States entirely independent, might be properly the subject of diplomatic adjustment."

Therefore, we believe it cannot be doubted that this Court may deny leave to file the Bill of Complaint in this case. The question, therefore, resolves into whether such leave should be denied.

It has been stated generally the courts of one State will not enforce the tax laws of another State.

Restatement of Conflicts of Laws (1934) Section 610 (c). See *Moore* v. *Mitchell*, 281 U. S. 18 (1930). See also *Massachusetts* v. *Missouri*, 308 U. S. 1 (1939), where this Court refused to enforce the inheritance tax laws of the State of Massachusetts. But see the remarks of Chief Justice Hughes at page 20. Compare *Texas* v. *Florida*, 306 U. S. 398 (1938). But see dissenting opinion of Mr. Justice Frankfurter at page 428.

The question here, however, is whether this Court will construe the tax laws of Alabama. The only case we have found dealing with this question is *Pratt* v. *Dean*, 246 Mass. 300 (1923). The Supreme Judicial Court of Massachusetts was called upon to construe the Federal estate tax act and a New Jersey estate tax act. The Massachusetts court declined to pass upon these statutes remitting the parties to the courts of the respective jurisdictions.

Even as the Massachusetts court declined to construe the Federal tax acts, we believe this Court should decline to construe Alabama tax statutes. The reasons for this self restraint on the part of this Court are numerous.

In the first place a decision by this Court in this case would not be binding upon the courts of Alabama. The ques-

tions might be decided one way by this Court and yet the Alabama courts might decide the questions differently. This would create a most unfortunate conflict, and yet, though the title to the particular properties here involved might be cleared by a decision of this Court, admittedly the case would be erroneously decided.

In the next place, the Alabama courts are accustomed to construing Alabama tax statutes. The pertinent questions for decision are matters of common knowledge and experience by the judges. The administrative practices are known by personal experience. Reading statutes and decisions of the courts of this State cannot compensate for this intimate familiarity with the Alabama tax laws. *Cf. Hawks* v. *Hamil*, 288 U. S. 52 (1933).

No doubt the docket of this Court is crowded with cases arising under the Constitution and laws of Congress, cases primarily assigned to the Federal courts. We do not believe this docket should be further burdened with cases involving questions outside the scope of these categories. Incidentally the Clerk of the Supreme Court of Alabama informs us that the number of cases submitted in that court during the term 1939-40 was average. All cases submitted to it during that term were 359. Of this number 92 were petitions for certiorari to the intermediate appellate court of this State. The Supreme Court denied certiorari in more than fifty per cent of these cases. Furthermore, the Supreme Court of Alabama is divided into two divisions, hence, each judge was not called on to consider more than half of the 359 cases.

For these reasons, among others, we do not believe this Court should grant leave to the United States of America to file its Bill of Complaint to construe the revenue laws of the State of Alabama.

II.

Original Jurisdiction Should Not Be Exercised by This Court in This Case Since There is Another Forum Available to the Parties.

The argument under this Proposition is addressed to grounds numbered 2, 3 and 4 of the Return to the Rule to Show Cause.

Among the qualifications set up to the exercise of original jurisdiction in controversies between States, Mr. Chief Justice Hughes in the case of *Massachusetts* v. *Missouri*, 308 U. S. 1, 19 (1939) said:

> "We have observed that the broad statement that a court having jurisdiction must exercise it (see Cohens *v.* Virginia, 6 Wheat. 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum."

This idea that the existence of other available remedies is sufficient to warrant this Court to decline jurisdiction of a controversy otherwise within the limits prescribed for the Court seems to be inherent in the statement by Mr. Justice Butler in the case of *Alabama* v. *Arizona*, 291 U. S. 286, 291 (1934):

> "Its (this Court's) jurisdiction in respect of controversies between States will not be exerted in the absence of absolute necessity."

See also dissenting opinion in *Texas* v. *Florida*, 306 U. S. 398, 428 (1939).

In the exercise of appellate jurisdiction this Court held that a Federal district court in Pennsylvania should have dismissed a proceeding in that court involving the liquida-

tion of a banking concern in order that the concern be liquidated under the machinery established by the State statutes. *Pennsylvania* v. *Williams*, 294 U. S. 176 (1935). In the course of the opinion in that case, Mr. Justice Stone said: (185)

> "It is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy."

Compare the cases holding that the administrative remedies must be exhausted before a judicial review of tax assessments will be entertained.

Farncomb v. *Denver*, 252 U. S. 7 (1920);
McGregor v. *Hogan*, 263 U. S. 234 (1923);
First National Bank v. *Weld County*, 264 U. S. 450 (1924);
Gorham Mfg. Co. v. *Tax Commission*, 266 U. S. 265 (1924);
Chicago M. & St. P. R. R. Co. v. *Risty*, 276 U. S. 567 (1938).

For other cases holding that administrative remedies must be exhausted before judicial relief will be granted see:

Porter v. *Investors Syndicate*, 286 U. S. 461 (1932);
Petersen Baking Co. v. *Bryan*, 290 U. S. 570 (1934);
U. S. v. *Illinois Central R. Co.*, 291 U. S. 457 (1934);
Natural Gas Co. v. *Slattery*, 302 U. S. 300 (1937).

Furthermore, an injunction will not be granted against the collection of State taxes in the Federal district courts if the questions concerning the validity of the taxes may be determined in the State court by paying the tax under protest and bring an action at law in the State court to recover them back.

Arkansas Bldg. Assn. v. *Madden*, 175 U. S. 269 (1899);
Indiana Mfg. Co. v. *Koehne*, 188 U. S. 681 (1903);

Singer Sewing Mach. Co. v. *Benedict*, 229 U. S. 481 (1913);
Matthews v. *Rodgers*, 284 U. S. 521 (1932);
Stratton v. *St. Louis S. W. Ry.*, 284 U. S. 530 (1932);
Cf. Henrietta Mills v. *Rutherford County*, 281 U. S. 121 (1930).

We take it that in exercising discretion in deciding whether a bill of complaint may be filed in this Court the question of other available remedies will be considered. We further take it that the domestic policy of a State is a matter of concern in making this decision.

At the time the properties involved in this litigation were obtained by the United States there were several remedies available to it under the laws of the State of Alabama whereby the questions here involved could have been adjudicated by the Alabama courts. The taxes claimed could have been paid under protest and an action could have been maintained in *indebitatus assumpsit* against the officer collecting the same.

Wiley v. *Parmer*, 14 Ala. 627 (1848);
Raisler v. *Mayor & Council of Athens*, 66 Ala. 194 (1880);
Ward v. *First National Bank of Hartford*, 225 Ala. 10 (1932);
Pullman Car & Mfg. Co. v. *Hamilton*, 229 Ala. 184 (1934).

See also *Allred* v. *Dunn*, 207 Ala. 469 (1922) and cases cited there.

There are also statutes providing for this remedy. See General Acts 1935, pp. 256, 379, Sections 296-299.[10]

Furthermore after the taxes became delinquent and the property was certified to the probate judge for sale, the

[10] Appendix pages 30-31.

United States could have appealed from the order of sale made by the probate judge. General Acts 1935, pp. 256, 358, 359, Section 237.[11]

None of these remedies were sought. Instead the United States has allowed all of these remedies to expire and now seeks to prevail on this Court to exercise its original jurisdiction in this case, which remedy is not available to the taxpayers in the State of Alabama in consequence of Amendment XI to the Federal Constitution and Art. I, Section 14 of the Constitution of Alabama of 1901.[12]

The ordinary procedure followed in the State of Alabama under circumstances similar to those in this case is for the State to institute a statutory real action in the nature of ejectment in the courts of this State against the taxpayer in possession. General Acts of Alabama 1935, pp. 256, 363, Section 251.[13]

Since the United States has elected to purchase real property within the State of Alabama, it should be willing to abide by the laws and the domestic policy of this State. If the United States will consent to being made a party defendant in the courts of this State in a statutory real action in the nature of ejectment, we will assure this Court that all possible will be done to expedite the trial of this case to a final determination by the Supreme Court of Alabama in order that the questions involved in this action may be settled as expeditiously as possible. As noted above, the dockets of the courts are not so crowded but that a decision may be had as soon as the case is at issue.

For this Court to allow the United States to file this Bill of Complaint in this case is to allow the United States to ignore the orderly processes established by this State for

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[11] Appendix page 29.

[12] Appendix page 23.

[13] Appendix page 30.

the enforcement of its revenue laws and the determination of tax questions and then invoke a proceeding out of harmony with the domestic policy of this State. We are unable to believe that this Court will permit an owner of property within the State of Alabama, albeit is the federal government, to utilize the original jurisdiction of this Court in such a fashion.

III.

Original Jurisdiction Should Not be Exercised by This Court in This Case for the Complainant is Not Entitled to Relief under the Bill of Complaint.

The argument under this Proposition is addressed to grounds numbered 5, 6, 7 and 8 of the Return to the Rule to Show Cause.

In the case of *Alabama* v. *Arizona*, 291 U. S. 286, 291 (1934) Mr. Justice Butler speaking for the Court said:

> "A state asking leave to sue another to prevent the enforcement of laws must allege, in the complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor."

The facts alleged in the Bill of Complaint offered in the case at bar instead of being clearly sufficient to entitle the United States to a decree will compel the opposite result. That is, the facts alleged in the Bill of Complaint will compel a decree for the State of Alabama.

We take it there is no question but that the decision in this case will be governed by Alabama statutes and cases construing the same *Games* v. *Stiles*, 14 Peters, 322 (1840); *Witherspoon* v. *Duncan*, 4 Wall. 210 (1866); *Castillo* v. *McConnico*, 168 U. S. 674 (1898) *cf. Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938). The question to be answered is when does the lien for ad valorem real estate taxes in Alabama attach to the property assessed. Obviously Alabama statutes and court decisions construing them will control.

Section 372 of the Alabama Revenue Laws of 1935 (General Acts of Alabama 1935, pp. 256, 566) [14] answers this question. This statute provides that from and after the first day of October of each year when the property becomes assessable, the state shall have a lien to secure the payment of the taxes which may be assessed. Neither this nor any other statute of Alabama requires the amount of the tax to be ascertained for the lien to attach. In fact this section 372 provides to the contrary.

The cases construing this statute and its predecessors hold that the lien attaches at the beginning of the tax year even though the levy and assessment were made subsequently. Thus in the case of *Swann & Billups* v. *State*, 77 Ala., 545 (1884), land belonging to the state was conveyed to a railroad company on May 1, 1876. By statute these lands were exempt from taxation "for the term of eight years from the first day of May 1876." The question was whether the tax year commencing January 1, 1876 and ending December 31, 1876 should be included in computing the eight years. The tax year commenced January 1 at that time (Code of Alabama of 1876 section 360). The lien for taxes attached on January 1 (*op. cit.* section 375). The assessment was not completed until the August term of the court of county commissioners (*op. cit.* section 429, 430, 433). The levy for county taxes was made at the conclusion of the assessment (*op. cit.* section 435). The Supreme Court of Alabama held that since the liability for the tax for the year 1876 attached on January 1, 1876, though the amount thereof was not finally fixed, and since the State owned the property on that date, the tax year 1876 should not be included in the computation of the eight year exemption. See *Frost* v. *State ex rel. Clements*, 153 Ala., 654, 665 (1907) concerning the change of the tax year to the

[14] Appendix pages 31-32.

period October 1 to September 30. Compare *State Tax Commission* v. *Commercial Realty Co.*, 236 Ala. 358, 361 (1938) where the court stated that the use of real estate on October 1 determined its taxable status.

The effect of this decision, that the tax lien attaches at the beginning of the tax year, has been consistently applied and followed in this state. Thus, the lien attaching at the beginning of the year binds the property in the hands of bona fide purchasers subsequent to the commencement of the year, *Driggers* v. *Cassady*, 71 Ala., 529 (1882) even though the purchase was made during the tax year.

Rodgers v. *Gaines*, 73 Ala. 218 (1882);

Kuhl v. *Long*, 102 Ala. 563 (1893);

See: *Bains Bros. Inv. Co.* v. *Purdie*, 180 Ala., 333, 337, 338 (1912);

Cf. Henderson v. *Simmons*, 234 Ala. 329, 331, 332 (1937).

Following this the court held that the lien for the tax year commencing October 1, 1920 and ending September 30, 1921, did not apply to property acquired in November, 1921, after the tax year in question had closed.

Yarbrough Bros. Hardware Co. v. *Phillips*, 209 Ala. 341 (1923).

In the case of *State* v. *Alabama Educational Foundation*, 231 Ala. 11 (1935) the court held that a statute enacted September 9, 1927, could not exempt a taxpayer for taxes for the tax year commencing October 1, 1926 and ending September 30, 1927, under section 100 of the Constitution of Alabama of 1901.[15] On page 16 the court says:

> "We think that section 100 (of the Constitution) applies whether the liability is due or not, if it is fixed. There is a personal liability for ad valorem taxes on

[15] Appendix pages 23-24.

property by its owner on October 1st, for the succeeding year, though the amount is not then ascertained, and the Legislature is powerless to relieve him of it by act effective after that date."

The exact question for decision in the case at bar was presented to the Attorney General of Alabama and he ruled that property acquired by the United States subsequent to October 1 was subject to ad valorem taxes. Biennial Report Attorney General Alabama 1936-1938 p. 724 (same opinion in Quarterly Report, Attorney General Alabama Vol. XII, July-September 1938 page 78).

The case of *Union Bank & Trust Co.* v. *Phelps*, 228 Ala. 236 (1934) is not contrary to this position. This case holds that taxes for the tax year commencing October 1, 1931 and ending September 30, 1932, could not be remitted by the Legislature by an Act approved October 22, 1932.

Nor does the *Opinion of the Justices*, 234 Ala., 358 (1937) overrule this line of cases. The question asked the court was whether the legislature might exempt homesteads from ad valorem taxes for the tax year commencing October 1, 1936 and ending September 30, 1937 by an Act approved February 20, 1937. At the same time provision was made to take care of the revenues lost to the state by reason of the exemption by other statutes. Art. IV, Section 100 of the Constitution of Alabama of 1901 prohibits the legislature from releasing any "obligation or liability of any person" to the state. We take it that the Alabama court has construed the terms "obligation or liability" in this provision of the Constitution to apply only to taxes which have become due. The court so construed the words in the case of *Union Bank & Trust Co.* v. *Phelps, supra.* We think the *Opinion of the Justices, supra,* merely reiterated this construction. We do not believe the court meant to hold that the lien did not attach on October 1 for the then

current tax year, or that liability did not attach on that date. In fact, in the *Opinion of the Justices, supra,* on page 363 the court said:

> "Since the opinion in Swann *v.* State, 77 Ala. 545, the principle has been given effect, that one who owns taxable property at the beginning of the tax year is liable for the ad valorem tax on it for that year."

All that the court held was that Art. IV Section 100 of the Constitution did not prohibit the legislature from releasing this liability provided such statutes were enacted prior to the close of the tax year. (Whether this decision overrules *State* v. *Alabama Educational Foundation, supra,* is immaterial.)

When this case is read with *Alexander* v. *Board of Revenue,* 219 Ala. 110 (1929) where the court held that taxes might be increased by elections held in accordance with legislative action at any time before the close of the tax year, it does not seem out of line with the other cases holding the lien to attach on October 1 for the current year. The point is this: the lien attaches at the beginning of the tax year, but the amount of taxes due may be increased *Alexander* v. *Board of Revenue, supra,* or reduced *Opinion of Justices, supra,* by legislative action, without violating any constitutional provision.

Based on this theory we ruled as noted above, that when the federal government purchased real estate subsequent to October 1 that the taxes should be paid for the then current tax year.

In consequence of the United States taking the position it is maintaining in this case, contrary to what we believe to be the law and opposed to the administrative construction placed thereon, we think it not amiss to tell the Court the result of this conflict. If the United States buys one parcel of property from a vendor in Alabama who owns two par-

cels, then the taxes are collected from the vendor for the taxes on both parcels, for our lien (Section 372 of the Revenue Laws) gives the State a lien on all property owned by the taxpayer for all taxes. If the vendor pays the taxes only on the parcel of property which he does not sell to the United States, that parcel is then sold by the State for the taxes on the parcel sold to the United States.

If on the other hand, the United States buys all of the property a vendor owns in this State, then the taxes are not collected on the property. The land is sold to the State for taxes as in the case at bar, but since no consent has been given for the State to sue the United States, the State merely has title to property it is unable to obtain.

For the United States to conform to the Alabama State revenue laws as construed and administered in the State would not cost the Federal Government any more money. The United States pays the vendor the value of the land. Whether the vendor keeps all of the money or pays the State the taxes for the current year will not increase the value of the land nor should it increase the cost of the land to the Government. The United States could merely require the vendor of the land to produce a tax receipt for the current years taxes as well as the past years taxes, which we understand is required, in order for the vendor to perfect title to the land sold.

IV.

Original Jurisdiction Cannot Be Exercised by This Court in This Case to Make the State of Alabama a Defendant.

The argument under this Proposition is addressed to the ground Numbered 9 of the return to the rule to show cause.

Art. I, Section 14 of the Constitution of Alabama of 1901 [16]

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[16] Appendix page 23.

prohibits the State of Alabama from ever being made a party defendant in any action at law or equity. This constitutional provision, as are all such provisions in State constitutions, is a limitation of power. In other words, the inhabitants of Alabama have altered the status of the State by creating it without the power to be sued. By reason of this change of the nature of the sovereignty of the State it no longer exists as a suable entity. That power has been withdrawn by the people.

See *Alabama Industrial School* v. *Reynolds*, 143 Ala. 579 (1904);

Alabama Industrial School v. *Addler*, 144 Ala. 555 (1905);

State Docks Commission v. *Barnes*, 225 Ala. 403 (1932);

Dunn Construction Co. v. *State Board of Adjustment*, 234 Ala. 372 (1937).

The fact that at one time the State was subject to suit and by adopting the Federal constitution waived the necessity of consent to be sued in this Court, see *United States* v. *Texas*, 143 U. S. 621 (1892), is not controlling. For now this right to consent to be sued has been withheld by the people. See *Alabama Industrial School* v. *Addler, supra, Cf. Monaco* v. *Mississippi*, 292 U. S. 313 (1934).

Conclusion.

Since the proposed Bill of Complaint in this case seeks to have this Court construe the revenue laws of the State of Alabama, and since there is another forum available to the parties for the settlement of the dispute between the parties, and since the complainant is not entitled to relief under the said Bill of Complaint and since this is an effort to make the State of Alabama a party defendant in violation of its Constitution, leave should not be granted to the United States of America to file the proposed Bill of Com-

plaint, and the Motion for Leave to File Complaint should be denied.

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J. EDWARD THORNTON,
Assistant Attorney General, State of Alabama,
Of Counsel.

APPENDIX.

Constitution of United States of America.

Article III, Section 2, Clauses 1 and 2.

"Section 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make."

Constitution of Alabama of 1901.

Article I, Section 14.

"Sec. 14. That the State of Alabama shall never be made a defendant in any court of law or equity."

Article IV, Section 100.

"Sec. 100. No obligation or liability of any person, association, or corporation held or owned by this state, or by any county or other municipality thereof, shall ever be remitted, released, or postponed, or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon

payment of its face value; provided, that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims."

ARTICLE XIV, SECTION 269.

"Sec. 269. The several counties in this state shall have power to levy and collect a special tax (a) not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, state and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the constitution of eighteen hundred and seventy-five. The funds arising from such special school tax shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same length of time as practicable; provided, that this section shall not apply to the cities of Decatur, New Decatur, and Cullman."

AMENDMENT III.

"Special School Tax Amendment."

"Article XIX, Section 1. The several counties in the State shall have power to levy and collect a special county tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such counties in addition to that now authorized or that may hereafter be authorized for public school purposes, and in addition to that now authorized under Section 260 of Article XIV of the constitution; provided, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first sub-

mitted to the vote of the qualified electors of the county, and voted for by a majority of those voting at such election.

"Section 2. The several school districts of any county in the State shall have power to levy and collect a special district tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such district for public school purposes; provided, that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part, or such other school districts now existing or hereafter formed as may be approved by the county board of education; provided further, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the district and voted for by a majority of those voting at such election; provided further, that no district tax shall be voted or collected except in such counties as are levying and collecting not less than a three-mill special county school tax.

"Section 3. The funds arising from the special county school tax levied and collected by any county shall be apportioned and expended as the law may direct, and the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the district, as the law may direct."

Code of Alabama of 1923.

SECTION 213 AS AMENDED BY AN ACT APPROVED APRIL 21, 1936, GEN. ACTS OF ALABAMA, EX. SESS. 1936, P. 217.

"The Court of County Commissioners, Board of Revenue or other governing body of any county in this State, which county had outstanding on October 1, 1935, indebtedness evidenced by valid warrants or other evidences of indebtedness, may fund or refund said indebtedness by the issuance of funding or refunding warrants of said county in an amount not greater than the face amount of the debts being funded or refunded, including any interest which may have

accrued thereon. Funding or refunding warrants issued under the provisions of this Act shall mature serially in annual installments over a period of time not exceeding twenty years from the date of such funding or refunding and may bear interest at a rate not exceeding six percentum per annum. Such interest shall be payable semi-annually and may be evidenced by coupons attached to said warrants, or otherwise, as the governing body of said county may in its discretion deem advisable."

Revenue Laws of Alabama of 1935.

GENERAL ACTS OF ALABAMA OF 1935.

Page 263:

"Section 8. There is hereby levied for the purpose and upon the property hereinafter named and not specifically exempted from taxation, annual taxes, as follows, to-wit: (a) For the maintenance of the public schools of this State, thirty cents ($.30) on each one hundred dollars ($100.00) of the assessed value of taxable property. (b) For the relief of needy Confederate soldiers and sailors, resident citizens of Alabama, and their widows, ten cents ($.10) on each hundred dollars ($100.00) of the assessed value of taxable property. (c) For the use of the State and to raise revenue therefor, twenty-five cents ($.25) on each one hundred dollars ($100.00) of the assessed value of taxable property."

Pages 274, 275:

"Section 29. The return and listing of property, for taxation by the Tax Assessor must commence on the first day of October in every year, and shall be finished by him on the first day of January following; but the Assessor may be allowed through the third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, and such supplemental return must be entered as any other return and shall be embraced in the abstracts made for the Comptroller and Collector and State Tax Commission."

"Section 30. Between the first day of October and the first day of January of each year, the Tax Assessor shall in all counties having a population of one hundred thousand or less, visit each voting place in each precinct for the purpose of listing property for taxation, and he shall remain there one day in all county precincts and towns of less than one thousand inhabitants, from eight o'clock A. M. until four o'clock P. M. In towns other than county seats, of five thousand inhabitants or more, he shall remain at each place of appointment for one week, either by himself or deputy. In places of one thousand inhabitants and not over five thousand, he shall remain at the place of appointment for three days, either by himself or deputy. The Assessor shall give at least ten days notice by advertisement in a newspaper, if there be one published in the county, and by bill posted at five or more public places in each election precinct, of the time when he will attend to receive the tax returns. Upon the failure of the Tax Assessor to give the notice required by this Section, or to attend any appointment made by him in any precinct, he shall after legal notice, fill new appointments, or forfeit all claims to fees from such persons in such precinct as were disappointed by his non-attendance. He shall keep the office open at the court house all the year round. Provided, that the Court of County Commissioners or court of like jurisdiction, may by order duly entered on its minutes as other orders and decrees of the court are entered, relieve the Tax Assessor from making visits to each voting place in each precinct as above provided, when in the opinion of the court it is deemed advisable."

"Section 31. It is the duty of every person in every election precinct to attend in person before the Assessor on the first day of the appointment in the precinct of the taxpayer's residence, and then and there render to the Assessor under oath a full and complete list of all property of which he was owner, or in which he had any interest whatever, or of which he was trustee or agent on the first day of October of that year, and to enter upon such paper the amount of fire insurance carried upon any of the property so listed. The land and improvements thereon must be sep-

arately listed. On failure of the taxpayer for thirty days after demand or notice by the tax assessor, to furnish a sufficient description of his real estate, said tax assessor shall secure such description from the records of conveyance in the office of the probate court of his county, and if he is unable to get a sufficient description from such records, then by a survey of property by the county surveyor or otherwise, and the reasonable expenses incident thereto shall be allowed by the commissioners court or board of revenue, and paid out of the general fund of the county wherein the property involved is located, and such amount as is allowed shall be added as costs to the taxes assessed against such taxpayer, and when collected shall be covered into the general *found* of the county.

"Section 32. The Tax Assessor or his deputy, or any other officer administering the oath to the person making the return of property for taxation, must orally administer the following oaths to every taxpayer before making his returns: "You do solemnly swear that you will true answers make to all lawful questions which may be put to you touching the return you are about to make, and that you will make a full and complete return of all property owned by you, or in which you had any interest whatever or of which you were trustee or agent on the first day of October of the present tax year, and that you will make a full, complete and true statement of the amount of fire insurance thereon, and this return is made upon your personal knowledge, so help you God."

Pages 279, 280:

"Section 42. Every person of full age and sound mind and every firm or body corporate or politic, and every trustee and receiver shall, when legally called on by the Assessor, forthwith make a full, true and distinct statement of all real and personal property, with a correct description thereof of land and improvements, separately of which he is the owner or holder, individually, or as guardian, parent, husband, wife, trustee, administrator, executor, receiver, accounting officer, partner, agent or factor, and including all monies hoarded, held or owned on the first day of Octo-

ber of the current tax year, or any time preceding or succeeding the first day of October of the current year.

Page 288:

"Section 64. The Court of County Commissioners or other court of like jurisdiction, at the regular February term in each year, shall levy the amount of general taxes required for the expenses of the county for the current year, not to exceed one-half of one per cent of the value of the taxable property as assessed for revenue for the State as shown by the book of assessments after it shall have been corrected, and at the same time levying the amount of special taxes required for the county for the current year, which levy shall be made upon the same basis of valuation provided above and when such levy shall be made, to certify the rate or rates of taxation, and the purpose or purposes for which the tax is levied to the Tax Assessor of the County."

Pages 358, 359:

"Section 237. From any decree rendered by the probate court for the sale of real estate for the payment of taxes, the defendant in the cause or the State, in behalf of itself and the county, may appeal to the next term of the circuit court, in equity, of the county, within thirty days after the rendition of the decree. If the defendant appeals, he must execute a bond in double the amount of the decree, payable to the State of Alabama, with sufficient surety to be approved by the judge of probate, and conditioned that he will prosecute the appeal to effect, and pay such judgment as the appellate court may render thereon; but the State shall not be required to execute any bond. The solicitor of the circuit or county court shall represent the State on such appeal, and of the pendency thereof the judge of probate must give him notice in writing; and an appeal by the State, notice thereof shall be given the defendant, as in other cases of appeal from the court to the circuit court in equity, such appeal must be tried de novo, upon an issue made up under the direction of the court. If the defendant appeals, and the issue is decided adversely to him, the court

must render judgment against him and his sureties in favor of the State for the amount of the taxes, fees and costs, besides the costs of the appeal, and such judgment shall be a lien upon the lands described in the decree from which the appeal was taken, which lien with a description of the lands, must be declared in the judgment."

Page 363:

"Section 251. When lands are bid in for the State at tax sales the State shall be entitled to possession of said lands immediately upon execution of the certificate of sale by the Judge of Probate. If possession be not surrendered within six months from the date of sale, after demand therefor is made by the State Land Commissioner in behalf of the State, or if the certificate has been assigned, by the assignee, then the State Land Commissioner in the name of the State or the assignee of the State, if the certificate has been assigned, may maintain an action in ejectment, unlawful detainer, or a statutory real action in the nature of ejectment, or other proper remedy for the recovery of the possession of the lands purchased of such sales, and shall be entitled to hold the possession thereof on recovery. Provided that this shall not affect the right of minors or insane persons to redeem as provided in this Act. Provided mortgagees or other lien holders of record at the time of sale shall be served with a written notice of purchase at tax sale for the State, which notice shall be given in the name of the State by the State Land Commissioner, and such mortgagees or other lien holders shall have one year from date of such notice to redeem such lands. Privided that a notice filed in the office of the Judge of Probate of the county where the land is situated reciting the sale, the fact that such lands were bid in for the State, and the certificate of purchase and notifying all parties desiring to redeem shall be and operate as sufficient notice to such mortgagees or lien holders to redeem."

Page 379:

"Section 296. Any taxpayer who through any mistake, or by reason of any double assessment, or by any error, in the assessment or collection of taxes, or other error, has

paid taxes that were not due upon the property of such taxpayers, shall, unless such tax was with knowledge of the facts voluntarily paid by the taxpayer, be entitled, upon making proof to the *satisfaction* of the State Comptroller of such payment, to have such taxes refunded to him if application shall be made therefor, as hereinafter provided, within two years from the date of such payment.

"Section 297. In order to procure the refunding under the provisions of the preceding section, of the amounts erroneously paid for taxes on property, the taxpayer, his heirs or assign shall file in duplicate a petition directed to the judge of probate of the county wherein the land is situated, setting up the facts relied on to procure the refunding of the money so erroneously paid.

"Section 298. The judge of probate shall examine said petition, and also the tax books of his county, and if the facts set forth in the petition are such as to entitle the petitioner to the refunding of the money as prayed for, he shall so certify to the Comptroller, stating the amount to be refunded by the State, and forward to the Comptroller a copy of the petition with his certificate endorsed thereon, and if the Comptroller shall be satisfied that the petitioner is entitled to have the money refunded to him, he shall draw his warrant on the State treasurer in favor of the petitioner for such an amount as the certificate of the probate judge shows should be refunded.

"Section 299. The judge of probate shall likewise certify his findings on the duplicate petition, stating the amount of money which petitioner is entitled to receive from the county, and such petition, with his certificate endorsed thereon, he shall deliver to the petitioner, who may present the same to the court of county commissioners or other like governing body, and if said court is satisfied with the proof of the claim made by the petition, the court must allow said claim to the amount of tax paid to the county, and draw a warrant on the treasurer of the county for the amount allowed in favor of the petitioner."

Page 566:

"Section 372. From and after the first day of October of each year, when property becomes assessable the State

shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

(1870)

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FILE COPY

Supreme Court, U.S.

OCTOBER TERM, 1946

NO. 12, ORIGINAL

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE STATE OF ALABAMA,

Defendant.

BRIEF FOR THE STATE OF ALABAMA

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INDEX

SUBJECT INDEX

	Page
Jurisdiction	1
Statement of Case	2
Summary of Argument	8
Argument	9
1. The existence of tax liens to secure the payment of ad valorem taxes is to be determined by the law of the state where the tax and lien are imposed	9
2. Lands in Alabama acquired before the time when by completion of levy and assessment the amount of state taxes has been ascertained are subject to the statutory lien for the taxes	19
A. The lien to secure the payment of ad valorem taxes in Alabama attaches to lands subject to taxation on October 1 of each year regardless of the subsequent disposition of the lands	19
B. The proper construction of the tax immunity of the United States does not prevent the state from completing the levy and assessment of ad valorem taxes for the current year in which the lands are acquired by the United States	32
C. The statutory tax lien of the state, even though inchoate, at the time of the purchase or taking of the property by the United States, constituted a right protected under the Fifth Amendment to the Constitution of the United States	34a
3. The law recognizes no fraction of a day	35
4. The invalidity of the tax sales in this case does not free the tracts of land from their share of the taxes	35
Conclusion	37
Appendix	38

CITATIONS

Cases:	Page
Aberdeen Nat. Bank v. Chehalis County, 166 U. S. 440 (1897)	16
Arbuthnot v. Thatcher, 237 Ala. 593 (1939)	23
Armour Packing Co. v. Lacy, 200 U. S. 226 (1906)	17
Arnold v. United States, 9 Cranch. (U. S.) 104 (1815)	35
Bailey v. Magwire, 22 Wall. 215 (1874)	14
Bains Bros. Inv. Co. v. Purdie, 180 Ala. 333 (1912)	27
Bains Bros. Inv. Co. v. Walthall, 180 Ala. 45 (1912)	27
Baker v. Druesedow, 263 U. S. 137 (1923)	14
Baker v. Schuessler, 85 Ala. 541 (1888)	22
Ballard v. Hunter, 204 U. S. 241 (1907)	16
Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375 (1904)	14
Bardon v. Land & River Improvement Co., 157 U. S. 327 (1895)	15
Beck v. Johnson, 235 Ala. 323 (1938)	35
Bedford v. U. S., 23 F. (2d) 453, 455 (C. C. A. 1st, 1927)	34a
Bingaman v. Golden Eagle Western Lines, 297 U. S. 626 (1936)	18
Brine v. Ins. Co., 96 U. S. 627 (1877)	10
Brown-Forman Co. v. Kentucky, 217 U. S. 563 (1910)	17
Carpenter v. Commonwealth, 17 How. 456 (1854)	16
Carrol v. Safford, 3 How. 441 (1845)	14
Castillo v. McConnico, 168 U. S. 674 (1898)	14
Central Pac. R. R. Co. v. Nevada, 162 U. S. 512 (1896)	14
Chicago M. & St. P. R.R. Co. v. Risty, 276 U. S. 567 (1928)	15
City of Santa Monica v. Los Angeles County, 15 Cal. App. 710 (1911)	22
Clement Nat. Bank v. Vermount, 231 U. S. 120 (1913)	17
Coverdale v. Arkansas-Louisiana Pipe Line Co., 303 U. S. 604 (1938)	18
Colt v. Barnes, 64 Ala. 108 (1879)	22
Commercial Bank v. Chambers, 182 U. S. 556 (1901)	16
Cordova v. Hood, 17 Wall. 1 (1872)	11
County of Dallas v. Timberlake, 54 Ala. 403 (1875)	22
Des Moines Bank v. Fairweather, 263 U. S. 103 (1923)	17
Detroit International Bridge Co. v. Tax Board, 287 U. S. 295 (1932)	17
Douglas v. Noble, 261 U. S. 165 (1923)	17
Driggers v. Cassady, 71 Ala. 529 (1882)	26
Edward Hines Trustees v. Martin, 268 U. S. 458 (1925)	18
Erie R. R. Co. v. Pennsylvania, 21 Wall. 492 (1874)	17
Escondido v. Escondido Lumber Co., 8 Cal. App. 435 (1908)	22
Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112 (1896)	15

Cases—Continued. Page

Farncomb v. Denver, 52 U. S. 7 (1920) 15
Fidelity Nat. Bank v. Swope, 274 U. S. 123 (1927) 16
First Nat. Bank v. American Surety Co., 237 Ala. 35 (1938) 22
First Nat. Bank v. Ayers, 160 U. S. 660 (1896) 16
First Nat. Bank v. Weld County, 264 U. S. 450 (1924) 15
French v. Taylor, 199 U. S. 274 (1905) 15
Gage v. Pumpelly, 115 U. S. 454 (1885) 15
Games v. Stiles, 14 Pet. 322 (1840) 12
Geekie v. Kirby Carpenter Co., 106 U. S. 379 (1882) 15
Green v. Lessee of Neal, 6 Pet. 291 (1832) 18
Hancock v. City of Muskogee, 250 U. S. 454 (1919) 16
Hartman v. Bean, 99 U. S. 393 (1878) 24
Hawks v. Hamill, 288 U. S. 52 (1933) 31
Hefner v. Northwestern Life Ins. Co., 123 U. S. 747 (1887) 10
Henderson v. Simmons, 234 Ala. 329 (1937) 27
Hibben v. Smith, 191 U S. 310 (1903) 15
Hill v. Bacon, 110 Mass. 387 (1872) 35
Hussman v. Durham, 165 U. S. 144 (1897) 10
In re Opinion of the Justices, 234 Ala. 358 (1937) 21, 28, 32
In re Knox-Powell-Stockton Co., 100 Fed (2d) 979 (C.C.A. 9th 1939) 21
Kehrer v. Stewart, 197 U. S. 60 (1905) 17
Keith v. Johnson, 271 U. S. 1 (1926) 16
Knapp, Stout & Co. v. McCaffrey, 177 U. S. 638 (1900) 11
Knighton v. Curry, 62 Ala. 404 (1878) 22
Kuhl v. Long, 102 Ala. 562 (1893) 27
Lane County v. Oregon, 7 Wall. 71 (1868) 13, 14
Lewis v. Monson, 151 U. S. 545 (1894) 13
Louisville & N. R. R. Co. v. Greene, 244 U. S. 522 (1917) 17
Lott v. Mobile County, 79 Ala. 69 (1885) 22
Lowndes v. Huntington, 153 U. S. 1 (1894) 18
McGregor v. Hogan, 263 U. S. 234 (1923) 14
Martin v. West, 222 U. S. 191 (1911) 11
Merchants Bank v. Pennsylvania, 167 U. S. 461 (1897) 16
Michigan v. Michigan Trust Co., 286 U. S. 334 (1932) 17
New Brunswick v. United States, 276 U. S. 547 (1928) 33
New York v. Jersawit, 263 U. S. 493 (1924) 17
New York v. Maclay, 288 U. S. 209 (1933) 30
North Laramie Land Co. v. Hoffman, 268 U. S. 276 (1925) 31
Orvis v. Powell, 98 U. S. 176 (1878) 10
Osborne v. Florida, 164 U. S. 650 (1897) 17
Osterberg v. Union Trust Co., 93 U. S. 424 (1876) 21, 24
Paddell v. City of New York, 211 U. S. 446 (1908) 10
Palmer v. McMahon, 133 U. S. 660 (1890) 16

Cases—Continued. Page

People v. Commissioners, 104 U. S. 466 (1881) 24
People v. Weaver, 100 U. S. 539 (1879) 16
Peoples' Nat. Bank v. Marye, 191 U. S. 272 (1903) 17
Pullman Co. v. Knott, 235 U. S. 23 (1914) 17
Railroad Commission of Texas v. Pullman Co.,—U.S.—, 86 L. ed. (Adv. Sheets 1941) 580 8
Raymond v. Longworth, 14 How. 76 (1852) 14
Rodgers v. Gaines, 73 Ala. 218 (1882) 27
St. Louis Land Co. v. Kansas City, 241 U. S. 419 (1916) 15
San Diego County v. Riverside County, 125 Cal. 495 (1899) 22
Schaefer v. Werling, 188 U. S. 516 (1903) 15
Schuessler v. Dudley, 80 Ala. 547 (1886) 22
Scott v. Renfro, 106 Ala. 611 (1894) 23
Sheffield City Co. v. Tradesmans Nat. Bank, 131 Ala. 185 (1901) 36
Shotwell v. Moore, 129 P. S. 590 (1889) 24
Sioux County v. National Surety Co., 276 U. S. 238 (1928) 18
Southern Investment Co. v. Galloway, 206 Ala. 445 (1921) 27
State v. Alabama Educational Foundation, 231 Ala. 11 (1935) 28
State v. Northwestern Tele. Exch. Co., 80 Minn. 17 (1900) 22
State Tax Commission v. Commercial Realty Co., 236 Ala. 358 (1938) 27
Stebbins v. Riley, 268 U. S. 137 (1925) 16
Cf. Stockton v. B. & N. Y. Ry. Co., 32 F. 9 (Cir. Ct. D. N. J. 1887) 34a
Swann & Billups v. State, 77 Ala. 545 (1884) 27, 33
The Winnebago, 205 U. S. 354 (1907) 11
Thompson v. Fairbanks, 196 U. S. 516 (1905) 11
Turner v. Teague, 73 Ala. 554 (1883) 22
Turnipseed v. Jones, 101 Ala. 593 (1893) 35
Turpin v. Lemon, 187 U. S. 51 (1902) 15
Union Bank & Trust Co. v. Phelps, 228 Ala. 236 (1934) 28
United States v. Snyder, 149 U. S. 210 (1893) 32
United States v. Thekla, 266 U. S. 328 (1924) 37
United States v. Union Pacific R. R. Co., 160 U. S. 1 (1895) 37
U. S. v. Wheeler Township, 66 F. (2d) 977, 980 (C.C.A. 8th, 1933) 34a
Waggoner Estate v. Wichita County, 273 U. S. 113 (1927) 14
Wayne County v. U. S., 53 Ct. Cl. 417, 423, 424 (1918) affirmed 252 U. S. 574 (1920) 34a
Willoughby v. Chicago, 235 U. S. 45 (1914) 15
Wise v. State, 208 Ala. 58 (1922) 36
Witherspoon v. Duncan, 4 Wall. 210 (1867) 12
Wood v. Brady, 150 U. S. 18 (1893) 16
Wood v. Fort, 42 Ala. 641 (1868) 35
Wood v. McCook Water Works Co., 97 Neb. 215 (1914) 22
Yazoo & M. V. R. R. Co. v. Adams, 181 U. S. 580 (1901) 13

Statutes:

	Page
Federal Judicial Code, sec. 233, 28 U. S. C., sec. 341	1
C. 852 sec. 613, 45 Stat. 875	24
R. S., sec. 3466, 31 U. S. C., sec. 191	30
Constitution of Alabama of 1901	
Art. IV, Sec. 100	29, 32
Art. XI, Sec. 211	38
Art. XI, Sec. 214	38
Art. XI, Sec. 215	38
Art. XIX, as amended	6, 26
Code of Alabama of 1923	
C. 1, Sec. 12	20
C. 16, Art. 5, Sec. 213, as amended	6
C. 45, Art. 5, Sec. 2603	24
C. 313, Art. 2, 3, Sec. 8799, 8814	23
C. 313, Art. 4, Sec. 8820(4)	23
C. 314, Art. 1, Sec. 8832, 8833	23
C. 314, Art 2, Sec. 8863	23
C. 314, Art. 3, Sec. 8868	23
C. 314, Art. 4, Sec. 8870	23
C. 314, Art. 6, Sec. 8874	7, 20, 36
C. 314, Art. 7, Sec. 8878	23
C. 314, Art. 8, Sec. 8890	23
C. 314, Art. 9, Sec. 8892	23
C. 314, Art. 10, Sec. 8897	23
C. 314, Art. 11, Sec. 8901	23
C. 314, Art. 12, Sec. 8906	23
C. 314, Art. 13, Sec. 8910	23
C. 314, Art. 14, Sec. 8914	23
C. 314, Art. 15, Sec. 8919	23
C. 314, Art. 16, Sec. 8924	23
C. 314, Art. 18, Sec. 8933	24
C. 314, Art. 19, Sec. 8935	36
Act No. 194, General Acts of Alabama of 1935 pp. 256-274	
Sec. 2	32
Sec. 6	5, 26
Sec. 7	6

Statutes—Continued. Page

Sec. 8 ____ 6, 25
Sec. 11 ____ 4
Sec. 29 ____ 4, 26
Sec. 30 ____ 3, 26
Sec. 31 ____ 3, 6
Sec. 42 ____ 6
Sec. 47 ____ 26
Sec. 50 ____ 4
Sec. 64 ____ 6, 25
Sec. 214 ____ 4
Sec. 232 ____ 5
Sec. 248 ____ 7, 35
Sec. 268 ____ 7
Sec. 269 ____ 7
Sec. 372 ____ 20

Toulmin, Digest of the State of Alabama (1823) p. 744, Sec. 12 ____ 20
Aikin, Alabama Digest (1833) p. 415, Taxation, Sec. 37 ____ 20
Clay's Digest (1843) p. 566, Taxes, Sec. 52 ____ 20
Code of Alabama of 1852, Sec. 487 ____ 20
Code of Alabama of 1867, Sec. 562 ____ 20
Code of Alabama of 1876, Sec. 375 ____ 20
Code of Alabama of 1886, Sec. 459 ____ 20
Code of Alabama of 1896, Sec. 3921 ____ 20
Code of Alabama of 1907, Sec. 2093 ____ 20
Code of Alabama of 1923, Sec. 8874 ____ 20
Act No. 328, General Acts of Alabama of 1919 pp. 282, 449 ____ 20
Revenue Code of Alabama of 1923, Sec. 346 ____ 20
Revenue Code of Alabama of 1929, Sec. 381 ____ 20

Texts and Miscellaneous:

Rules of Civil Procedure for the District Courts of the United States, Rule 12(b) ____ 2
American Law Institute, Restatement, CONFLICTS OF LAWS, Section 230 ____ 10
11 Amer. Jur. 341, Conflicts of Laws, Sec. 46 ____ 10
3 Cooley, TAXATION (4th ed. 1924) p. 2141, Sec. 1062 ____ 33
3 Cooley, TAXATION (4th ed. 1924) p. 2454, Sec. 1232 ____ 19
Biennial Report, Attorney General of Alabama 1928-30, p. 543 ____ 28
Biennial Report, Attorney General of Alabama 1936-38, p. 724 ____ 28

Supreme Court of the United States

OCTOBER TERM, 1940

NO. 12,—ORIGINAL

THE UNITED STATES OF AMERICA

Plaintiff,

vs.

THE STATE OF ALABAMA

Defendant,

BRIEF FOR THE STATE OF ALABAMA

JURISDICTION

This is an original action in this Court by the United States of America against the State of Alabama whereby the United States seeks to remove alleged clouds from the title of the United States to certain lands in Macon County, Alabama. The jurisdiction of this Court is invoked under section 233 of the Judicial Code of the United States, 28 U. S. C. section 341.

STATEMENT OF CASE

The statement of the case made in the Brief for the United States is not incorrect. Certain provisions of the revenue laws of Alabama which we believe are pertinent, however, have been omitted. Furthermore, the statement made fails to emphasize certain facts which we believe call for emphasis. For these reasons, we make our own statement of the case which is not in conflict with the statement made in the Brief for the United States, but in addition thereto.

Leave was granted the United States of America to file its Bill of Complaint in this cause on January 20, 1941. On March 3, 1941 the State of Alabama filed its Answer thereto. Included in the Answer was a Motion to Dismiss as authorized by Rule 12 (b) of the Rules of Civil Procedure for the District Courts of the United States.

From the Bill of Complaint and the Second Defense in the Answer along with other facts averred in the Brief for the United States and the facts averred in this Brief we take it that the facts are as hereinafter set out.

On October 1, 1936, the tract of land first described in Paragraph 1 of the complaint was owned in fee simple by C. C. Bridges and J. E. Bridges; the tract next described in said paragraph was owned in fee simple by Tom W. Willis; and the tract last described in said paragraph was owned in fee simple by R. M. Boyd.

On October 1, 1936, said C. C. Bridges and J. E. Bridges conveyed said first mentioned tract to the United States; on December 10, 1936, said Tom W. Willis and wife conveyed the second mentioned tract to the United States; and on March 10, 1939, said R. M. Boyd and wife conveyed the last mentioned tract to the United States.

Each of the conveyances of said tracts to the United States contained general covenants of warranty and, in effect, warranted said lands to be free from any tax lien. Said lands were at the time of the filing of this suit and still are in the possession of the United States.

Each tract of land was returned to the Tax Assessor of Macon County, Alabama, for purposes of ad valorem taxation by the respective owners thereof.[1] A value was placed on the respective tracts of land by the respective owners, which value was subsequently accepted by the said Tax Assessor, and approved by the Board of Review of Macon County, Alabama, as the assessed value of said tracts of land for purposes of ad valorem taxation. The assessed valuation of the respective tracts of land was the same for the tax year in question, which commenced October 1, 1936 and ended September 30, 1937, as for the preceding tax year which commenced October 1, 1935 and ended September 30, 1936.

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[1] Act No. 194, General Acts of Alabama 1935, pp. 256, 274, Sec. 30, 31, Appendix, pp. 41, 42.

After the returns were filed by the respective owners of the respective tracts of land, the assessed value of each of said tracts of land was entered upon said returns by the said Tax Assessor in the column designated thereon for such purpose as authorized by sections 29 and 50 of the Revenue Laws of Alabama of 1935, Act No. 194, General Acts of Alabama of 1935, pp. 256, 274.[2] Said assessments were thereafter reported to the Board of Review for said County which met on March 8, 1937, and adjourned on March 20, 1937, and which assessments were approved by said Board, and from which no appeal was taken. (See Appendix B, pp. 42, 43 in Brief for The United States.)

All ad valorem taxes in Alabama become due and payable on October 1, and delinquent on the 1st day of January of the next year,[3] hence the taxes on these assessments became due October 1, 1937 and delinquent January 1, 1938.

Said taxes not having been paid, upon report of such fact by the Tax Collector to the Probate Court[4] proceedings were instituted in said Court of Macon County, Alabama, for the sale of said lands for the payment of said unpaid taxes, costs and fees. (Sections 214 to 242, Act No. 194).

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[2] Appendix, pp. 40, 44, 45.

[3] Section 11 of said Act No. 194, Appendix, pp. 39, 40.

[4] Section 214 of said Act No. 194. Brief for the United States. Appendix A, page 28.

On May 16, 1938, a decree was entered against C. C. Bridges and J. E. Bridges for the sale of the first mentioned tract for unpaid taxes, $44.31, and costs, $10.66. On May 16, 1938, decree was entered against R. M. Boyd for the sale of the third mentioned tract for unpaid taxes, $105.84, and costs, $12.38. And on June 12, 1938, a decree was entered against Tom W. Willis for the sale of said second mentioned tract for unpaid taxes, $13.22, and $2.19 costs. On June 12, 1939, each of said tracts of land was sold pursuant to said decrees and at said sales was bid in for the State, the Bridges tract for $58.98, the Boyd tract for $118.84, and the Willis tract for $19.51, and pursuant to section 232, Act No. 194[5] a certificate of purchase was in each instance issued to the State by the Probate Court, which certificates are still held by the State.

All taxes levied on property in Alabama are required to be "assessed in exact proportion to the value of such property" * * (Article XI, section 211, Constitution of Alabama of 1901)[6]

All taxable property within the State is required to be "assessed for the purpose of taxation at sixty per cent of its fair and reasonable market value" as of October 1 of each current tax year.[7]

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[5] Brief for the United States, Appendix A, page 33.

[6] Appendix, page 38.

[7] Section 6 of said Act No. 194, Appendix, page 39.

Such value is required to be determined as of October 1, the first day of each current tax year;[8] and the individual owners are required to list and return for taxes for said year all property owned by them on October 1.

The rate of the levy for state purposes is limited by the Constitution to not more than "sixty-five one hundredths of one per centum on the value of the taxable property within this state", (Article XI, Section 214, Constitution of Alabama of 1901)[9] and such rate is fixed by Section 7 of said Act No. 194.[10] The levy for state purposes in accordance therewith is made by Section 8 of said Act No. 194.[11]

The maximum rates for county taxation are provided by Section 215 of the Constitution of Alabama of 1901,[12] and by Article XIX of the Constitution of Alabama of 1901, as amended,[13] and Section 64 of Act No. 194[14] and Section 213 of the Code of Alabama of 1923[14a] which required the Court of County Commissioners in the regular February Term in each year to levy such taxes to the extent necessary, subject to the constitutional maximum rates.

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[8] Sections 31 and 42 of said Act No. 194, Appendix, pp. 42, 43.

[9] Appendix, page 38.

[10] Appendix, page 39.

[11] Brief for the United States, Appendix A, page 24.

[12] Appendix, pp. 38, 39.

[13] Brief for the United States, Appendix A, page 40.

[14] Brief for the United States, Appendix A, page 25.

[14a] Appendix, pp. 45, 46.

The county tax for said year was levied on February 8, 1937, at the rate of seventy-five one hundredths of one per cent; and the school district tax for said year was submitted to and approved by the qualified electors of said school district at an election therefor held on June 14, 1937, which levy became effective for said current tax year.

Under the provisions of Section 248, Act No. 194,[15] it is provided that if the tax sale is for any cause ineffectual to pass title to the state (with certain exceptions not here applicable), the sale operates as an assignment of the liens to the state and authorizes such liens to be foreclosed in equity. See also Section 8874 of the Code of Alabama of 1901.[16] Said lands are subject to redemption from such tax sales by the former owner, mortgagee, purchaser, or by any person having an interest therein, which redemption may be made at any time before the title passes out of the state. (Section 268 and 269, Act No. 194.[17])

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[15] Appendix, page 45.

[16] Appendix, page 46.

[17] Brief for the United States, Appendix A, pp. 34, 35.

SUMMARY OF ARGUMENT

It is the contention of the state in this case that since the lands in question were subject to taxation on October 1, 1936, the lien of the state attached to the lands on that date and the United States purchased the lands subject to the lien. Conceding the invalidity of the tax sales nevertheless the state now has a lien for the amount of the taxes and this being a court of equity, the decree, if rendered by this Court (*cf. Railroad Commission of Texas v. Pullman Co.*—U. S.—,86 L. ed. (Adv. Sheets 1941) 580) should be moulded to do justice between the parties and give effect to the lien of the State of Alabama.

In support of these contentions, the State of Alabama maintains the following propositions of law:

1. The existence of tax liens to secure the payment of ad valorem taxes is to be determined by the law of the state where the tax and lien are imposed.

2. Lands in Alabama, acquired before the time when by completion of levy and assessment the amount of state taxes has been ascertained, are subject to the statutory lien for the taxes.

A. The lien to secure the payment of ad valorem taxes in Alabama attaches to lands subject to taxation on October 1 of each year regardless of the subsequent disposition of the lands.

B. The proper construction of the tax immunity of the United States does not prevent the state from completing the levy and assessment of ad valorem taxes for the current year in which the lands are acquired by the United States.

C. The statutory tax lien of the state, even though inchoate, at the time of the purchase or taking of the property by the United States, constituted a right protected under the Fifth Amendment to the Constitution of the United States.

3. The law recognizes no fraction of a day.

4. The invalidity of the tax sales in this case does not free the tracts of land from their share of the taxes.

ARGUMENT

1

THE EXISTENCE OF TAX LIENS TO SECURE THE PAYMENT OF AD VALOREM TAXES IS TO BE DETERMINED BY THE LAW OF THE STATE WHERE THE TAX AND LIEN ARE IMPOSED.

We were of opinion that this proposition was self-evident and would require no argument. Apparently, however, the argument advanced by the attorneys for the United States is premised on the assumption that decisions rendered by courts of other jurisdictions determine the existence of Alabama tax liens on lands in Alabama. The decisions of courts of other jurisdictions construing statutes

of other states are enlightening in determining how the Alabama courts shall or should have construed Alabama statutes. The ultimate decision, however, is determined by the Alabama statutes and the decisions construing the same concerning liens on lands in Alabama.

This proposition is expressed in the American Law Institute, Restatement, CONFLICT OF LAWS, section 230 as follows:

> "The creation and effect of a lien on land is determined by the law of the state where the land is."

See also 11 Am. Jur. 341, Conflict of Laws, Section 46.

This proposition was applied to tax liens in:

Hefner v. Northwestern Life Ins. Co., 123 U. S. 747 (1887)

Cf. *Hussman v. Durham*, 165 U. S. 144 (1897)
Paddell v. City of New York, 211 U. S. 446 (1908)

With reference to mortgages on real estate, the rights incident to the foreclosure thereof are determined by the law of the state where the land is situated.

Orvis v. Powell, 98 U. S. 176, 177 (1878)

The rights of redemption from foreclosure are determined by the laws of the same state.

Brine v. Ins. Co., 96 U. S. 627, 633, 634 (1878)

The existence of a vendors lien was premised on the law of the state where the land was.

Cordova v. Hood, 17 Wall. 1, 5 (1872)

Liens on personal property are also determined by the law of the state where such property is situated.

Thompson v. Fairbanks, 196 U. S. 516, 522 (1905)

Cf. Knapp, Stout & Co. v. McCaffrey, 177 U. S. 638 (1900)

This same rule applies to boats.

The Winnebago, 205 U. S. 354, 360 (1907)

Martin v. West, 222 U. S. 191, 196 (1911)

In the Memorandum For the United States, filed in answer to the Brief and Argument In Opposition To Motion For Leave to File Complaint, the attorneys for the United States in effect argue that the questions for decision in this case cannot depend upon the varying statutes of the several states. This Court has repeatedly held, however, that not only is the status of liens determined by the law of the situs, but the construction of tax statutes is a matter peculiarly governed by the varying statutes, and decisions construing the same, of the states where the land is situated.

Thus, in the case of *Games v. Stiles*, 14 Pet. 322, 328 (1840) this Court said:

> "The laws in Ohio, imposing a tax on lands, and regulating its collection, like similar laws in, perhaps, almost all of the States, are peculiar in their provisions, having been framed under the influence of a local policy. And this policy has, to some extent, influenced the construction of those laws. There can be no class of laws more strictly local in their character, and which more directly concern real property, than these. They not only constitute a rule of property, but their construction by the courts of the State should be followed by the courts of the United States, with equal if not greater strictness than the construction of any other class of laws."

This idea was further set out in *Witherspoon v. Duncan*, 4 Wall. 210, 217 (1867) where the Court states:

> "It is not the province of this court to interfere with the policy of the revenue laws of the States, nor with the interpretation given to them by their courts. Arkansas has the right to determine the manner of levying and collecting taxes, and can declare that the particular tract of land shall be chargeable with the taxes, no matter who is the owner, or in whose name it is assessed and advertised, and that an erroneous assessment does not vitiate a sale for taxes."

In the case of *Lewis v. Monson*, 151 U. S. 545, 549 (1894) the Court said:

> "No question is more clearly a matter of local law than one arising under the tax laws. Tax proceedings are carried on by the State for the purpose of collecting its revenue, and the various steps which shall be taken in such proceedings, the force and effect to be given to any act of the taxing officers, the results to follow the non-payment of taxes, and the form and efficacy of the tax deed, are all subjects which the State has power to prescribe, and peculiarly and vitally affecting its well-being. The determination of any questions affecting them is a matter primarily belonging to the courts of the State, and the national tribunals universally follow their rulings except in cases where it is claimed that some right protected by the Federal Constitution has been invaded."

See also *Lane County v. Oregon*, 7 Wall. 71, 74 (1868).

In line with these statements, this Court has held itself bound by the statutes and decisions construing the same, of the several states in the following situations involving the assessing, collecting, and enforcing of taxes:

The date when the ad valorem tax becomes due:

Yazoo & M. V. R.R. Co. v. Adams,
181 U. S. 580, 583 (1901)

The interests subject to ad valorem taxes:

Carrol v. Safford, 3 How. 441, 460 (1845)
Central Pac. R. R. Co. v. Nevada, 162 U. S 512, 522, 523 (1896)
Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375, 381 (1904)
Waggoner Estate v. Wichita County, 273 U. S. 113, 117 (1927)

See: *Baker v. Druesedow*, 263 U. S. 137, 142, 143 (1923)

The procedure for assessing ad valorem taxes:

McGregor v. Hogan, 263 U. S. 234, 236 (1923)

See: *Bailey v. Magwire*, 22 Wall. 215, 231 (1874)

The medium of exchange for payment of the tax:

Lane County v. Oregon, 7 Wall. 71, 74 (1868)

The validity of a tax sale:
Raymond v. Longworth, 14 How. 76, 78, 79 (1852)
Castillo v. McConnico, 168 U. S. 674, 680, 682, 684 (1898)

See: *Turpin v. Lemon*, 187 U. S. 51, 57 (1902)

The construction of a tax deed:

Geekie v. Kirby Carpenter Co., 106 U. S. 379, 385 (1882)
Bardon v. Land & River Improvement Co., 157 U. S. 327, 331, 332, 333, 338 (1895)
French v. Taylor, 199 U. S. 274, 277 (1905)

See: *Gage v. Pumpelly*, 115 U. S. 454 (1885)

The remedy to recover taxes illegally paid:

First Nat. Bk. v. Weld County, 264 U. S. 450, 454 (1924)

The construction of statutes imposing public improvement assessments

Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112, 154, 155 (1896)
Schaefer v. Werling, 188 U. S. 516, 518 (1903)
Hibben v. Smith, 191 U. S. 310, 321 (1903)
Willoughby v. Chicago, 235 U. S. 45, 49, 50 (1914)
St. Louis Land Co. v. Kansas City, 241 U. S. 419, 427 (1916)
Farncomb v. Denver, 252 U. S. 7, 10 (1920)
Chicago M. & St. P. R. R. Co. v. Risty, 276 U. S. 567, 570 (1928)

The right to impose public improvement assessment liens:

Hancock v. City of Muskogee,
250 U. S. 454, 456 (1919)

The construction of statutes providing for the sale of lands to enforce public improvement liens:

Wood v. Brady, 150 U. S. 18, 23 (1893)

Cf. *Ballard v. Hunter*, 204 U. S. 241 (1907)

Statutes validating public improvement assessments:

Fidelity Nat. Bank v. Swope, 274 U. S. 123, 134, 135 (1927)

Inheritance taxes:

Carpenter v. Commonwealth,
17 How. 456, 462 (1854)
Keith v. Johnson, 271 U. S. 1, 8 (1926)

See: *Stebbins v. Riley*, 268 U. S. 137, 145, 146 (1925)

Tax on national banks:

People v. Weaver, 100 U. S. 539, 541, 542 (1879)
Palmer v. McMahon, 133 U. S. 660, 665 (1890)
First Nat. Bank v. Ayers, 160 U. S. 660, 664 (1896)
Aberdeen Nat. Bk. v. Chehalis County,
166 U. S. 440, 444 (1897)
Merchants Bk. v. Pennsylvania,
167 U. S. 461, 462 (1897)
Commercial Bank v. Chambers,
182 U. S. 556, 560 (1901)

Peoples' Nat. Bk. v. Marye,
191 U. S. 272, 276 (1903)
Clement Nat. Bk. v. Vermount,
231 U. S. 120, 134 (1913)
Des Moines Bank v. Fairweather,
263 U. S. 103, 105 (1923)

What is a franchise tax:
Pullman Co. v. Knott, 235 U. S. 23, 27
(1914)

The computation of a franchise tax:
Louisville & N. R. R. Co. v. Greene,
244 U. S. 522, 548 (1917)
New York v. Jersawit, 263 U. S. 493, 495
(1924)

The corporations subject to a franchise tax:
Erie R. R. Co. v. Pennsylvania,
21 Wall. 492, 497 (1874)
Michigan v. Mich. Trust Co.,
286 U. S. 334, 342 (1932)
Detroit International Bridge Co. v. Tax Bd., 287 U. S. 295, 297 (1932)
Privilege licenses:
Osborne v. Florida, 164 U. S. 650, 654
(1897)
Kehrer v. Stewart, 197 U. S. 60, 68 (1905)
Armour Packing Co. v. Lacy,
200 U. S. 226, 234 (1906)
Brown-Forman Co. v. Kentucky,
217 U. S. 563, 571, 572 (1910)
Douglas v. Noble, 261 U. S. 165, 168
(1923)

Coverdale v. Arkansas-La. Pipe Line Co.,
303 U. S. 604, 609 (1938)

Gasoline taxes:
Bingaman v. Golden Eagle Western Lines,
297 U. S. 626, 628 (1936)

The construction by the state courts of state statutes which constitute rules of property is binding on this Court.

Green v. Lessee of Neal, 6 Pet. 291, 299, 300 (1832)

Lowndes v. Huntington, 153 U. S. 1, 19 (1894)

See: *Edward Hines Trustee v. Martin*, 268 U. S. 458, 462, 463 (1925)

In fact, the construction of state statutes generally by state courts is binding on this Court.

Sioux County v. National Surety Co.,
276 U. S. 238, 240 (1928)

In the Brief filed by the United States on page 2 thereof, it is stated that one of the questions presented is whether lands in Alabama are subject to a lien to secure the payment of ad valorem taxes when such lands are purchased by the federal government "* * after the date upon which property is made subject to such lien by state statute * * *". This question is to be answered by the legislation found in Alabama as construed by Alabama Courts. The question for decision, therefore, narrows down to the statutes and decisions of Alabama.

LANDS IN ALABAMA ACQUIRED BEFORE THE TIME WHEN BY COMPLETION OF LEVY AND ASSESSMENT THE AMOUNT OF STATE TAXES HAS BEEN ASCERTAINED ARE SUBJECT TO THE STATUTORY LIEN FOR THE TAXES.

A. The Lien To Secure The Payment Of Ad Valorem Taxes In Alabama Attaches To Lands Subject To Taxation On October 1 Of Each Year Regardless Of The Susbequent Disposition Of The Lands.

The general rule with reference to the date when a lien attaches to lands to secure the payment of ad valorem taxes is stated in 3 Cooley, TAXATION (4th Ed. 1924) p. 2454, Sec. 1232, as follows:

> The time when the lien will attach to land must be determined by the terms of the statute. Sometimes the statute names a day as that from and after which the tax shall be a lien; and when that is done, it may determine, as between subsequent purchasers and encumbrancers, the liability for the tax."

In Alabama this time when the lien attaches is definitely fixed by Section 372 of the Revenue Laws of Alabama of 1935.[18] Section 8874 of the Code of Alabama of 1923 (Appendix page 46) expressly provides that the lien attaching on October 1 is "* * * for the payment of any and all taxes which may be assessed against the owner, or upon such property, *during that year*, * * *". Italics supplied).

A detailed discussion of the various statutes giving the state a lien is not considered necessary. It it to be observed, however, that in each instance, the legislature has recited that the lien attaches at the commencement of the tax year. The legislature has

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[18] Brief for the United States, Appendix A, page 38.
The predecessors of this Section creating a lien for taxes are as follows:
Toulmin, Digest of the State of Alabama (1823) p. 744, Section 12
Aikin, Alabama Digest (1833) p. 415, Taxation, Section 37
Clay's Digest (1843) p. 566, Taxes, Section 52
Code of Alabama of 1852, Section 487
Code of Alabama of 1867, Section 562
Code of Alabama of 1876, Section 375
Code of Alabama of 1886, Section 459
Code of Alabama of 1896, Section 3921
Code of Alabama of 1907, Section 2093
Code of Alabama of 1923, Section 8874

The Revenue Act of 1919, provided a lien to secure the payment of ad valorem taxes by Section 416 thereof, Act No. 328, General Acts of Alabama 1919, pp. 282, 449. By Section 12 of the Code of Alabama of 1923 the revenue laws were omitted therefrom. The revenue laws were compiled in pamphlet form in 1923 and Section 416 of the Revenue Act of 1919 was brought forward into the pamphlet as Section 346 of the Revenue Laws of Alabama of 1923. The revenue laws of Alabama were again compiled in 1929 and the lien section was brought forward as Section 381 of the Revenue Laws of Alabama of 1929. This was brought forward as Section 372 of the Revenue Act of 1935, the one presently in effect.

Section 8874 of the Code of Alabama of 1923, Appendix page 46, remains in effect and is to be considered in deciding whether the State has a lien to secure the payment of taxes.

never considered the ascertainment of the amount of the tax as a prerequisite to the existence of the statutory lien. The enforcement of the lien might be postponed awaiting the ultimate ascertainment of the amount of the tax due. However, this would not indicate that the legislature did not intend for the state to have a lien, a definite charge on the property, attach as of the beginning of the tax year.

The objection has been raised that the amount of the tax was not definitely ascertained at the beginning of the tax year, and therefore, there was no lien at that time which the State of Alabama had. Since the property was then purchased by the federal government, no further action could be taken by the state toward creating a lien on the lands involved. The fallacy of this argument arises from the assumption that the State of Alabama has nothing at the beginning of the tax year.[19]

In the nature of things, there is no objection to the creation of a statutory lien to secure the payment of taxes, the amount of which is not ascertained. There are many cases so holding. For a few such cases, see:

Osterberg v. Union Trust Co., 93 U. S. 424 (1876)

In re Knox-Powell-Stockton Co., 100 F. (2d) 979, 983 (C. C. A. 9th 1939)

Bates v. Archer, 288 F. 182, 183, 184 (C. C. A. 6th 1923)

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[19]Even *In re Opinion of the Justices*, 234 Ala. 358 (1937) relied on in opposition to the state's position in this case, the lien is called "inchoate".

San Diego County v. Riverside County,
125 Cal. 495, 500 (1899)
City of Santa Monica v. Los Angeles County,
15 Cal. App. 710, 712 (1911)

See: *Escondido v. Escondido Lbr. Co.*,
8 Cal. App. 435, 439 (1908)
State v. Northwestern Tele. Exch. Co.,
80 Minn. 17, 21 (1900)
Wood v. McCook Water Works Co.,
97 Neb. 215, 219 (1914)

In the State of Alabama statutory liens have been recognized and enforced on property belonging to tax officials and the sureties on their bonds in cases of defalcation by the official though the amount of the defalcation was unknown at the time of the conveyance of the property sought to be charged, and even at the time the action was brought to enforce the lien.

County of Dallas v. Timberlake,
54 Ala. 403, 412 (1875)
Knighton v. Curry, 62 Ala. 404, 407 (1878)
Turner v. Teague, 73 Ala. 554, 556 (1883)
Lott v. Mobile County, 79 Ala. 69, 74, 75 (1885)
Schuessler v. Dudley, 80 Ala. 547, 549 (1886)
Baker v. Schuessler, 85 Ala. 541, 543 (1888)

Cf. *First Nat. Bk. v. American Surety Co.*,
237 Ala. 35, 37, 38 (1938)

See: *Colt v. Barnes*, 64 Ala. 108, 122 (1879) concerning the statutory lien of the state with reference to railroad bonds endorsed by the state.

The statutory landlord's lien is another instance where a lien is recognized though the amount secured thereby is not definite and fixed.

See: *Scott v. Renfro*, 106 Ala. 611, 614 (1894)
***Arbuthnot v. Thatcher*, 237 Ala. 593, 595, 596 (1939)[20]**

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[20]Valid statutory liens are created to secure the payment of debts or liabilities in advance of the accrual thereof, and to secure the performance of specified duties or obligations in advance of any default or breach thereof, including security for taxes not yet due or accrued. Examples of such statutory liens may be found in the following:

(a) Landlord's liens (Code of Alabama of 1923 Sections 8799 and 8814)
(b) Liens for use and occupation of lands (*op. cit.* Section 8820 (4))
(c) Mechanics and materialmen's liens (*op. cit.* Sections 8832 and 8833)
(d) Blacksmith and woodworkmen's liens (*op. cit.* Section 8863)
(e) Liens of jeweler's and watch makers (*op. cit.* Section 8868)
(f) Liens on ships, steamboats and other water craft (*op. cit.* Section 8879)
(g) Liens of railway laborers and employees (*op. cit.* Section 8878)
(h) Liens of livery stable keepers (*op. cit.* Section 8890)
(i) Agisters' pasturage or trainers' liens (*op. cit.* Section 8892)
(j) Liens upon certain livestock (*op. cit.* Section 8897)
(k) Liens of sawmill laborers (*op. cit.* Section 8901)
(l) Stumpage liens (*op. cit.* Section 8906)
(m) Liens on owners of booms and bulkhead (*op. cit.* Section 8910)
(n) Public ginners' liens (*op. cit.* Section 8914)
(o) Liens of sawmill owners or operators (*op. cit.* Section 8919)
(p) Liens of owners of peanut machines or pickers (*op. cit.* Section 8924)

This Court has sustained the lien of a state for taxes even though the amount of the tax was not finally fixed. In the case of *Osterberg v. Union Trust Co.*, 93 U. S. 424 (1876) it appears that a railroad was purchased on August 16, 1875. The purchaser went into possession on December 9, 1875. In Illinois taxes were made a lien on May 1 of each year, but the equalization board did not meet to finally fix the values on property for taxation until the second Tuesday in August. The tax books were delivered to the tax collector during the first ten days in December. This Court held the purchaser bought the property subject to the taxes for 1875.

It would appear that this Court has recognized the validity of a statutory lien to secure the payment of taxes to the federal government even though the amount of the tax was not definitely and finally fixed when the lien attached.

Hartman v. Bean, 99 U. S. 393, 397, 398 (1878)[21]

(q) Liens of hotel, inn, boarding house or restaurant keepers (*op. cit.* Section 8933)

(r) State liens upon property of certain public officers to secure faithful performance of official duties (*op. cit.* Section 2603)

In the Federal system of taxation, there are provisions creating statutory liens, viz: General statutory lien provisions (c. 852 Sec. 613, 45 Stat. 875)

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[21]This Court has also recognized the validity of state statutes fixing an arbitrary date upon which the status of the property is determined for ad valorem tax purposes and has given effect to such statutes.

People v. Commissioners, 104 U. S. 466, 468 (1881)

Shotwell v. Moore, 129 U. S. 590, 598 (1889)

Thus, it is not essential to the validity of a statutory lien attaching as of a fixed date that the amount secured thereby be known. Though the attorneys for the United States argue (Brief for the United States p. 10) that in the nature of things such a lien cannot be had, we take it, on the authorities above cited, this cannot be true. No constitutional provisions have been cited to prevent the creation of such a lien. Hence, we take it that the question in this case resolves itself into a determination of whether the legislature of the State of Alabama has imposed a lien as of October 1, on the lands involved in this case, even though the amount secured thereby is not finally fixed on that date.

On October 1, 1936, the effective date of the statutory lien for ad valorem taxes for the current tax year commencing on that date and ending September 30, 1937, the property involved and the then owners thereof were subject to the tax, and

(a) the state levy had been made; (Act No. 194, General Acts of Alabama 1935, p. 256, Section 8)

(b) the levy on behalf of the county had been authorized for general and specified purposes, and the maximum rates fixed; (*op cit.* Section 64, and Section 213, Code of Alabama, as amended)

(c) the duty of the taxpayer to return and list the property for taxation and the duties of the Tax Assessor in that regard commenced on October 1, the date of the lien, though additional time was provid-

ed within which to complete the work of making such returns; (*op cit.* Sections 29 and 30)

(d) the basis for the assessment had then been fixed by law, namely, sixty per cent (60%) of the fair and reasonable market value thereof as of October 1, 1936; (*op. cit.* Section 6)

(e) the statute provided the assessed value "as fixed for taxation for the year next preceding the then current tax year shall be prima facie the basis of the value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a less valuation unless upon evidence submitted to the Board of Review, as provided for herein, it is found that the assessed valuation of the property reviewed should be reduced; * * *"; (*op. cit.* Section 47 Appendix p. 43, 44).

(f) the law under which the district school tax was imposed for such current year had been adopted, fixing therein the maximum rate of the levy, but such levy was subject to approval by vote of the majority of the qualified electors residing within such district. (Section 2 of Article XIX of the Constitution of Alabama, as amended)

The cases construing the Alabama statutes, referred to in a previous Brief, are hereinafter set out.

The Supreme Court of Alabama held in the case of *Driggers v. Cassady*, 71 Ala. 529, 534 (1882):

"The alienation of the land by the owner, Hargrove, although made prior to the date of sale, could not affect the lien of the State for delinquent taxes. The sale to Oates, made in October, 1878, *was after this lien had accrued*, which, in point of time, is fixed by statute to be the first of January of the year for which the taxes were assessed.—Code, section 375."

Accord: *Kuhl v. Long*, 102 Ala. 562 (1893)

The doctrine in this case was affirmed with reference to personal property in the case of *Rodgers v. Gaines*, 73 Ala. 218 (1882).

The status of the property for purposes of taxation is determined as of the beginning of the tax year.

Swann & Billups v. State, 77 Ala. 545 (1884)

Cf. State Tax Comm. v. Com. Realty Co., 236 Ala. 358, 361 (1938)

The taxability of the individual for the ownership of property is also determined as of the beginning of the tax year.

Bains Bros. Inv. Co. v. Walthall, 180 Ala. 45 (1912)

Bains Bros. Inv. Co. v. Purdie, 180 Ala. 333 (1912)

Southern Inv. Co. v. Galloway, 206 Ala. 445, 446 (1921)

Cf. Henderson v. Simmons, 234 Ala. 329, 331 (1937)

In the case of *State v. Alabama Educational Foundation*, 231 Ala. 11 (1935) the court held that a statute enacted September 9, 1927, could not grant an exemption of ad valorem taxes to the taxpayer for the tax year commencing October 1, 1926, and ending September 30, 1927. See also *Union Bank & Trust Co. v. Phelps*, 228 Ala. 236 (1934) in this connection.

Based on these cases and the language of the court therein, the Attorney General of Alabama has consistently ruled that the lien of the state to secure ad valorem taxes arises at the beginning of the tax year, even though the exact amount of the tax may not at that time be known and even though the property is acquired by a government during the year. See Biennial Report Attorney General of Alabama 1928-30, page 543. Biennial Report of Attorney General of Alabama 1936-38, page 724. The legislature of Alabama has met since these opinions were rendered and no effort has been made to alter the statutes of Alabama to indicate a different legislative intent from that set forth in these opinions.

The attorneys for the United States rely upon the language found in *In Re Opinion of the Justices*, 234 Ala. 358 (1937) as overturning this consistent rule which has been administered and applied by the taxing officials of the State of Alabama. We do not believe this language of the court warrants such a conclusion. In that case, the court was called upon to decide whether the legislature might exempt homesteads from state ad valorem taxation for the tax year commencing October 1, 1936 and ending Sep-

tember 30, 1937 by an act of the legislature approved February 20, 1937. At the time this act was approved, other provisions were enacted to take care of the revenue lost to the state by reason of the exemption. The court held that the subjects of taxation were matters of legislative discretion and this discretion could be exercised at any time before the taxes become due. The court held that Section 100 of Article IV of the Constitution of Alabama of 1901 prohibiting the release of obligations or liabilities did not apply to prohibit the legislature from ascertaining the subjects of taxation during the tax year. In the course of the Opinion on page 364, the court stated:

> "After October 1st, the Legislature cannot relieve one, by classification of taxpayers, or otherwise, from the payment of ad valorem taxes for that year on property owned by him October 1st, to the extent that the Legislature subjects such property to such taxes for that year, whether the act of the Legislature either in subjecting it or exempting it occurred before or after October 1st.
>
> "Section 100 of the Constitution was not intended to control the power of the Legislature in selecting or the exempting of property of certain classes from taxation. But as to such property as is and remains taxable by act of the Legislature, its owner on October 1st is and remains liable for the payment of the tax, and he or the class of taxpayer to which he

belongs cannot be relieved of its payment by act of the Legislature effective after October 1st."

In the Brief filed on behalf of the United States (pp. 14-15), the decision of Mr. Justice Cardozo in the case of *New York v. Maclay*, 288 U. S. 209, (1933), is relied upon as an authority under which the Court may cancel the assessment and lien imposed by the State against the individual grantors for the tax year in which the United States purchased the lands involved. That case may be clearly distinguished. It did not involve a claim by the United States for tax immunity, but the assertion by the United States of a right of preference against assets of an insolvent, a preference expressly granted under Section 3466 of Revised Statutes (31 U. S. C. Section 191). In that case, even though the tax was not an ad valorem tax, and the lien of the state was inchoate, it was held to be such a lien as would be good against subsequent purchasers, that is, against one purchasing subsequent to the statutory lien date. It is assumed that such rule against subsequent purchasers would be held binding even against the United States, if in such case the United States had been a "subsequent purchaser", and had attempted to interpose a claim of tax immunity instead of asserting a right of preference under Section 3466.

The citation of authorities arising under such statute (Section 3466, Revised Statutes) do not appear to have an application to the assertion of a claim for tax immunity, for the reason that the doc-

trine of tax immunity has been construed and applied prospectively with full recognition of existing liens, whereas the claim of preference under Section 3466, Revised Statutes, is expressly provided to operate in effect retrospectively against conflicting claims or liens.

Since this question is a question of Alabama law and since the administrative officials have consistently construed the tax laws of Alabama in accordance with the position taken by the State in this case, we do not believe this Court should substitute its judgment for the considered practice followed in Alabama. *Cf. Hawks v. Hamill*, 288 U. S. 52 (1933).

As noted in the previous brief, this State has collected a large amount of taxes from property owners in the State of Alabama whose property was conveyed to the federal government after October 1, but before the amount of the tax had become finally fixed. If a property owner in Alabama owns property other than that conveyed to the federal government, the state has collected the tax by reason of the fact that the lien which it has on the remaining property secures the payment of the tax on the property sold to the government. The property owners in the State of Alabama have accepted this construction and have paid their taxes in reliance thereon. We believe that the federal government as a landowner in the State of Alabama should be subject to the same laws as other property owners.[22]

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[22] *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 283 (1925).

B. The Proper Construction Of The Tax Immunity Of The United States Does Not Prevent The State From Completing The Levy And Assessment Of Ad Valorem Taxes For The Current Year In Which The Lands Are Acquired By The United States.

The tax immunity of the United States with respect to property owned by it is expressly recognized by the State of Alabama and is given effect by the provisions of Section 2 of the Revenue Laws of Alabama of 1935 (Act No. 194, General Acts of Alabama 1935, pp. 256, 257); wherein "all property, real and personal owned by the United States" is exempted from ad valorem taxation.

The decisive question revolves around the manner of giving proper effect to the tax immunity of the United States, without disrupting the recognized right of the state to enact and enforce a system of taxation for the collection of annual ad valorem taxes upon property and persons subject to the jurisdiction of the state.[23] The question is not one which merely involves a technical construction of the time when the state tax lien becomes such a fixed or final obligation or liability as it may not be released by the legislature without violating the provisions of Section 100 of the Constitution of Alabama of 1901, as was the subject of discussion in *In Re Opinion of the Justices*, 234 Ala. 358 (1937).

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[23] "The power of taxation has always been regarded as a necessary and indispensable incident of sovereignty. A government that cannot, by self administered methods, collect from its subjects the means necessary to support and maintain itself in the execution of its functions is a government merely in name." Per Shiras, J., *United States v. Snyder*, 149 U. S. 210 214 (1893).

The right of the United States to tax immunity, like a legislative act granting tax exemptions, unless otherwise expressly provided therein, should not be given any retroactive effect, but should be construed prospectively, beginning with the next succeeding annual tax period in the case of annual ad valorem taxes. This accords every consideration to the power of taxation reserved to the States, and avoids an undue burden upon or embarrassment of either the United States or the State.

Such construction is not in conflict with any provisions of the Federal Constitution or the laws of Congress enacted pursuant thereto. Such application of the privilege or right of tax immunity is a rule which justly and fairly works both ways and under the laws of the State of Alabama, if the United States owned the land on October 1 of any tax year, the exemption from tax is accorded for the full period of the current tax year even though the United States, at any time during the current tax year, sells and conveys the property to a private owner.[24] The general rule is to fix an annual date as of which the taxable status shall be determined regardless of changing conditions or ownership, and such rule has been held to "constitute the best regulation the law can establish". 3 *Cooley, Taxation* (4th Ed. 1924) p. 2141, Sec. 1062.

To protect the rights of the state and at the same time accord tax immunity to the United States

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[24] *Swann & Billups v. State*, 77 Ala. 545 (1884)
Cf. New Brunswick v. United States, 276 U. S. 547, 554 (1928)

effective for the next succeeding tax year as provided by the Alabama statute avoids conflict with any constitutional provisions. It gives full recognition to the taxing power of the state against the individual owner as well as to the privilege of tax immunity thereafter entitled to be enjoyed by the National Government, and seems to constitute the only constitutional, just and fair solution to the problem.

It is our understanding that the attorneys for the United States passing on the title of lands in Alabama acquired by the United States require evidence that the taxes for the preceding years have been paid. If, for any reason, this is not satisfactory, an amount sufficient to take care of these taxes is withheld or placed in escrow and not paid to the vendor until the matter is cleared up. It has never been suggested that these requirements were in derogation of the immunity granted the United States from state taxation.

For the United States to follow this same procedure for the current tax year would impose no burden on the United States inconsistent with its sovereignty. The cost of the land to the government would not increase. The United States would then require the vendor of the land to produce a receipt for the taxes for the current year as well as for the past years.

C. The Statutory Tax Lien Of The State, Even Though Inchoate, At The Time Of The Purchase Or Taking Of The Property By The United States, Constituted A Right Protected Under The Fifth Amendment To The Constitution Of The United States.

Under the decisions of Alabama, it has been held uniformly that the tax lien constituted a charge or encumbrance upon the property beginning October 1 of the current tax year. We, therefore, submit that the state's tax lien constituted such an encumbrance upon or interest in property as prohibited the taking thereof by the United States "for public use, without just compensation". The words "private property" appearing in Fifth Amendment to the Constitution are given a broad construction, and have been held to include property of subdivisions of a state, even though such property is ordinarily referred to as public property.

Wayne County v. U. S., 53 Ct. Cl. 417, 423, 424 (1918) affirmed 252 U. S. 574 (1920)

Bedford v. U. S.
23 F. (2d) 453, 455 (C. C. A. 1st, 1927)

U. S. v. Wheeler Township,
66 F. (2d) 977, 980 (C. C. A. 8th, 1933)

Cf. Stockton v. B. & N. Y. Ry. Co.
32 F. 9 (Cir. Ct. D. N. J. 1887)

Certainly, it would seem that the assertion of any right based upon or arising by reason of tax immunity should be subordinated to or conditioned upon the payment of "just compensation" to the state, the holder of such lien, and that the state, as such lienholder, is entitled to the protection of the Fifth Amendment to the Constitution in any decree which may be entered in this cause.

3.

THE LAW RECOGNIZES NO FRACTION OF A DAY

The tract of land belonging to C. C. and J. E. Bridges was conveyed to the United States on October 1, 1936. Assuming that the State of Alabama has a lien on October 1, 1936, for the payment of taxes, the lien attaches on that day and not on October 2. This was so decided in the case of *Hill v. Bacon*, 110 Mass. 387, 388 (1872). See also the following cases enunciating the same rule:

Arnold v. U. S., 9 Cranch. (U. S.) 104, 119, 120 (1815).
Wood v. Fort, 42 Ala. 641, 642 (1868).
Turnipseed v. Jones, 101 Ala. 593, 595, 596 (1893).
Beck v. Johnson, 235 Ala. 324 (1938).

4.

THE INVALIDITY OF THE TAX SALES IN THIS CASE DOES NOT FREE THE TRACTS OF LAND FROM THEIR SHARE OF THE TAXES

Even if the proceedings for the sale of the lands are held to be irregular or void, the lands were taxable for such tax year and were taxed against the individual owners and the lien therefor is valid and is enforceable in equity under Section 248 of Act No. 194 (Appendix p. 45) which provides:

"When the sale of any land sold for the payment of taxes is, for any cause, ineffectual to pass the title to the purchaser, whether individual or the State, except in the case in which such sales are in this chapter expressly declared to be invalid, such sale shall operate as an assignment to the purchaser of the rights and liens of the State and county in and to the lands sold, both as to the taxes paid at said sale, and as to the taxes subsequently paid by the purchaser. And such liens may be foreclosed in equity in the same manner as other liens as provided in this Act."

See also Section 8874 of the Code of Alabama of 1923. (Appendix p. 10). Also *Sheffield City Co. v. Tradesmans Nat. Bank*, 131 Ala. 185, 190 (1901).

In Alabama there is a general provision relating to the enforcement of liens, Section 8935 of the Code of Alabama of 1923, (Appendix pp. 46, 47) which has been applied to the enforcement of tax liens. *Wise v. State*, 208 Ala. 58, 61 (1922).

Such right or lien, we submit, may properly be enforced by this Court as a condition for the cancellation of the foreclosure proceedings; or, this Court may refuse to quiet the title of the United States against the interest claimed by the state, except upon condition that the amount legally due the state be paid in extinguishment of the lien or require the United States to effect a redemption of the property from the tax sale.

There is ample authority to support such a course, following the general equity rule that where a Court in Equity has jurisdiction of the parties, it will decide all matters in dispute and decree complete relief.

See:

United States v. Union Pacific R. R. Co., 160 U. S. 1, 50, 51, 52 (1895).

Cf. United States v. Thekla, 266 U. S. 328, 340 (1924).

CONCLUSION

Since by the statutes of Alabama as construed by its courts and officials, the applicable law in this case, the state had valid liens on the tracts of land involved in this case to secure the payment of ad valorem taxes on October 1, 1936, the United States acquired such lands burdened with such valid liens, and the relief sought in this case should be denied.

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APPENDIX

CONSTITUTION OF ALABAMA OF 1901

The Constitution of Alabama of 1901, Article XI, provides:

"Section 211. All taxes levied on property in this state shall be assessed in exact proportion to the value of such property, but no tax shall be assessed upon any debt for rent or hire of real or personal property, while owned by the landlord or hirer during the current year of such rental or hire, if such real or personal property be assessed at its full value."

"Sec. 214. The legislature shall not have the power to levy in any one year a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this state."

"Sec. 215. No county in this state shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum; provided, that to pay debts existing on the sixth day of December, eighteen hundred and seventy-five, an additional rate of one-fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges, or roads, (a) any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have

been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

REVENUE LAWS OF ALABAMA OF 1935

Act No. 194, General Acts of Alabama, 1935, p. 256, provides:

Page 263:

"Section 6. All taxable property within this State shall be assessed for the purpose of taxation at sixty per cent of its fair and reasonable market value."

Page 263:

"Section 7. The rate of taxation for State purposes shall be sixty-five one-hundredths (.65) of one per cent (1%) per annum on the assessed value of the taxable property within this State."

Page 267:

"Section 11. All taxes, unless otherwise provided by law shall become due and payable on the first day of October in each year, and shall become deliquent if not paid before the first day of January succeeding, except in cases when parties have moved or are about to move from the county, and except in cases when parties are closing out or going out of business, and except in cases where insolvency is impending, and except in cases where goods, wares and merchandise are advertised for sale at auction, bankrupt, insolvent, assignment or fire sales, or where said goods, wares and merchandise are advertised for sale for the satisfaction of creditors,

or as closing out or going out of business sale, or in any way where a person is disposing of substantially all of his taxable property in the county, in which cases such taxes shall become due and payable at once. Advertisements in the newspapers or otherwise, of a sale of any personal property as a closing out sale, fire sale, bankrupt sale, or any sale of like character shall be prima facie evidence that the collection of taxes due on such property or any other property so advertised is endangered within the meaning of this Section. Notice to any Tax Collector by the State Tax Commission, a Tax Assessor, Deputy Tax Assessor, Tax Agent, License Inspector or any other official of this State or any county thereof, that any person is about to move a whole or any part of his personal property from this State, shall be prima facie evidence that the collection of the taxes due or to become due by said person on such property or other property is endangered and upon failure of the Tax Collector to act as provided in Section 186 of this Act, he shall be liable on his bond for any neglect to immediately collect the taxes due, by levy and sale or otherwise."

Page 274:

"Section 29. The return and listing of property, for taxation by the Tax Assessor must commence on the first day of October in every year, and shall be finished by him on the first day of January following; but the Assessor may be allowed through the third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, and such supplemental return must be entered as any other return and shall be embraced in the abstracts made for the Comptroller and Collector and State Tax Commission."

Pages 274, 275:

"Section 30. Between the first day of October and the first day of January of each year, the Tax Assessor shall in all counties having a population of one hundred thousand or less, visit each voting place in each precinct for the purpose of listing property for taxation, and he shall remain there one day in all county precincts and towns of less than one thousand inhabitants, from eight o'clock A. M. until four o'clock P. M. In towns other than county seats, of five thousand inhabitants or more, he shall remain at each place of appointment for one week, either by himself or deputy. In places of one thousand inhabitants and not over five thousand, he shall remain at the place of appointment for three days, either by himself or deputy. The Assessor shall give at least ten days notice by advertisement in a newspaper, if there be one published in the county, and by bill posted at five or more public places in each election precinct, of the time when he will attend to receive the tax returns. Upon the failure of the Tax Assessor to give the notice required by this Section, or to attend any appointment made by him in any precinct, he shall after legal notice, fill new appointments, or forfeit all claims to fees from such persons in such precinct as were disappointed by his non-attendance. He shall keep the office open at the court house all the year round. Provided, that the Court of County Commissioners or court of like jurisdiction, may by order duly entered on its minutes as other orders and decrees of the court are entered, relieve the Tax Assessor from making visits to each voting place in each precinct as above provided, when in the opinion of the court it is deemed advisable."

Page 275:

"Section 31. It is the duty of every person in every election precinct to attend in person before the Assessor on the first day of the appointment in the precinct of the taxpayer's residence, and then and there render to the Assessor under oath a full and complete list of all property of which he was owner, or in which he had any interest whatever, or of which he was trustees or agent on the first day of October of that year, and to enter upon such paper the amount of fire insurance carried upon any of the property so listed. The land and improvements thereon must be separately listed. On failure of the taxpayer for thirty days after demand or notice by the tax assessor, to furnish a sufficient description of his real estate, said tax assessor shall secure such description from the records of conveyance in the office of the probate court of his county, and if he is unable to get a sufficient description from such records, then by a survey of property by the county surveyor or otherwise, and the reasonable expenses incident thereto shall be allowed by the commissioners court or board of revenue, and paid out of the general fund of the county wherein the property involved is located, and such amount as is allowed shall be added as costs to the taxes assessed against such taxpayer, and when collected shall be covered into the general found of the county."

Pages 279, 280:

"Section 42. Every person of full age and sound mind and every firm or body corporate or politic, and every trustee and receiver shall, when legally called on by the Assessor, forthwith make a full, true and distinct statement of all real and personal property, with a correct description thereof of land and improvements, separately of which he

is the owner or holder, individually, or as guardian, parent, husband, wife, trustee, administrator, executor, receiver, accounting officer, partner, agent or factor, and including all monies hoarded, held or owned on the first day of October of the current tax year, or any time preceding or succeeding the first day of October of the current year."

Pages 281, 282:

"Section 47. The Assessor shall, from information entered on the tax return list and from all other information known to him, or which he may procure, proceed to ascertain what, in his best judgment, is a fair and reasonable market value of each item of property returned by or listed to any taxpayer; provided, however, that the assessed value of any real estate or improvements as fixed for taxation for the year next preceding the then current tax year shall be prima facie the basis of the value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a less valuation unless upon evidence submitted to the Board of Review, as provided for herein, it is found that the assessed valuation of the property reviewed should be reduced; and the Assessor shall in separate columns, enter on such list such amount and value, and deduction for exemption to which such taxpayer is entitled; and the Tax Assessor shall also add to such list any item of property subject to taxation, owned by such taxpayer, or in which he has any interest whatever and which he had failed or omitted to place on such list; and the taxpayer shall be given notice by the Assessor, by registered mail, return receipt, demanded, or in person, of the items of property added to his assessment list after such list has been filed and before the Tax Assessor has completed his assessment; and the Assessor shall upon demand, furnish the tax-

payer with a certified copy of his assessment list so amended. In the event the value of real or personal property of any taxpayer is increased by the Board of Review, herein created, over the assessed value thereof, for the next preceding year, the taxpayer shall be furnished by registered mail, return receipt demanded, or in person, by the Secretary of the Board of Review, with a statement showing separately the value of his personal property, and his real property, and improvements thereon, such statement to be signed by the Chairman of the Board of Review, and also that such taxpayer may file in writing, with the Secretary of the Board of Review, on or before the last Monday in April, objections to any assessed valuation fixed as herein provided. But failure to give or receive the notices required in this Section shall not invalidate such assessment. Provided, however, that the taxpayer shall have the right any time before the taxes become due to appear before the Board of Review and have the assessment of his property reopened, if satisfactory proof is made that the taxpayer or his agent did not receive notice of such increase. The expense of postage incurred in carrying out the provisions of this Section shall be paid in equal proportions by the County and State, upon a certified statement thereof by the Secretary of the Board of Review, filed with the Court of County Commissioners, or the board or court of like jurisdiction and with the State Comptroller. The Tax Assessor shall be allowed twenty-five cents for each notice served as provided in this act, where the assessed valuation of any taxpayer's property is increased over the valuation as fixed for the preceding year, the same to be charged and collected as fees collected for delinquent assessments."

Page 284:

"Section 50. When the assessor shall have completed his work of assessing, valuing and equal-

izing property, which has been listed for taxation in his county and such valuation shall have been entered on the assessments lists, which shall not be later than the last Monday in February of each year, he shall certify over his signature to the correctness of the returns, showing valuations fixed by him, and he shall at once notify the State Tax Commission by registered mail, that he has completed his assessment, valuation and equalization work and that the tax returns are ready for the review and inspection as provided for in this Act. Such lists of property shall be by the assessor delivered to the Board of Review not later than the second Monday in March."

Page 362:

"Section 248. When the sale of any land sold for the payment of taxes is, for any cause, ineffectual to pass the title to the purchaser, whether individual or the State, except in the case in which such sales are in this chapter expressly declared to be invalid, such sale shall operate as an assignment to the purchaser of the rights and liens of the State and county in and to the lands sold, both as to the taxes paid at said sale, and as to the taxes subsequently paid by the purchaser. And such liens may be foreclosed in equity in the same manner as other liens as provided in this Act."

CODE OF ALABAMA OF 1923

Section 213 as amended by an Act approved April 21, 1936, General Acts of Alabama, Extra Session, 1936, p. 217, provides:

"Section 213. SPECIAL TAX FOR COUNTY BUILDINGS, BRIDGES AND ROADS. The Court of County Commissioners or other governing body of like jurisdiction in any county in this state, may

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

NO. 12 -- ORIGINAL

THE UNITED STATES OF AMERICA

Plaintiff

vs.

THE STATE OF ALABAMA

Defendant

ADDENDA TO THE BRIEF FOR THE STATE OF ALABAMA

In the second line of the last paragraph on page 6, change the words "Section 215" to read "Sections 215 and 269".

Change the first paragraph on page 7 to read as follows:

"The county taxes for said year of fifty cents for general purposes, and of twenty-five cents for special road and bridge purposes were levied by the Board of Revenue of Macon County on February 8, 1937; the special county school tax under Section 269 of the Constitution of Alabama was approved at an election held on June 14, 1937, and was levied by the Board on June 15, 1937, effective for the current tax year; the special county school tax of thirty cents, under Section 1 of Article XIX of the Constitution, was approved by an election held on July 16, 1928, and was levied by the Board on July 21, 1928, for the period of ten years from September 30, 1928; and the special district school tax of thirty cents, under Section 2 of Article XIX of the Constitution, for School District No. 1, was approved at an election held on May 15, 1929, and was levied by the Board on May 18, 1929, for the tax years of 1929 to 1938, both inclusive, all of which levies were based upon each one hundred dollars worth of taxable property."

On page 25, change subparagraph (b) to read as follows:

"(b) All county and special district taxes had been levied, except the levy for general county purposes of fifty cents on each one hundred dollars worth of taxable property, and for special county road and bridge purposes of twenty-five cents on each one hundred dollars worth of taxable property, and for special county school purposes

of ten cents on each one hundred dollars worth of taxable property, thereafter levied pursuant to law within the maximum rates fixed by the Constitution. (Sections 215 and 269 and Article XIX of the Constitution of Alabama, as amended, Section 216 of the Code of Alabama of 1923, as amended, and Section 64 of Act No. 194)."

On page 26, strike out subparagraph (f).

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levy and collect such special taxes as it may deem necessary not to exceed one-fourth of one per centum per annum, for the purpose of paying any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary bridges or public buildings, or incurred for the erection of public roads since the 28th day of November, 1901, or that may hereafter be created for the erection, repairing, furnishing or maintenance of public buildings, bridges or roads; which taxes so levied and collected shall be applied exclusively to the purpose for which the same are so levied and collected."

Chapter 314, Article 6, provides:

"8874. LIEN OF STATE AND COUNTY FOR TAXES. From and after the first day of October of each year, the state shall have a prior lien upon each and every piece or parcel or property, real or personal, for the payment of any and all taxes which may be assessed against the owner, or upon such property, during that year, for the use of the state; and the county shall have a like lien thereon for the payment of the taxes which may be assessed against such owner, or upon such property, during that year, for the use of the county; and these liens shall exist as to all lands bid in by the state at tax sales for the annual taxes thereafter assessed on the value of the property so purchased, in the event of the tax title failing."

Chapter 314, Article 19, provides:

"8935. STATUTORY MODE OF ENFORCING NOT EXCLUSIVE. The statutory modes provided in this Code for the enforcement of liens are not the

exclusive modes of enforcing such liens; but are cumulative merely. Any lien may be enforced in the manner provided by statute, if so provided, or in equity, or by attachment for enforcing liens, or by any similar mode or remedy existing at common law."

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SUPREME COURT OF THE UNITED STATES.

No. 12, Original.—October Term, 1940.

The United States of America,
Plaintiff,
vs.
The State of Alabama.

[May 26, 1941.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The United States brought this suit to quiet its title to land in Macon County, Alabama. The complaint alleges that the State of Alabama is asserting liens as attaching to the land on October 1, 1936, for state and county taxes for the tax year 1937; and further that the State claims an interest in the land by reason of tax sales and the issue to the State of certificates of purchase. The Government asks a decree declaring the liens, tax sales and certificates of purchase to be invalid and enjoining the State from asserting its claims. The case was heard on bill and answer.

There are three tracts involved, which were conveyed by the owners to the United States on October 1, 1936, December 10, 1936, and March 10, 1937, respectively.

The applicable statute of Alabama[1] provides that "From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him . . . which lien shall continue until such taxes are paid". The county is to have a like lien for taxes assessed by it. These liens are made superior to all other liens and may be enforced by sale as provided in the Act.

[1] Section 377, Act No. 194, General Acts Alabama, 1935, p. 566, is as follows:

"From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the

Under the statute, the process of assessment for the tax year 1937 began on October 1, 1936. The grantors in the above mentioned conveyances, as the respective owners on that date, made their returns and in due course the tax assessor listed and valued the several tracts.[2] His valuations were certified as provided by the statute to the county board of review, which by virtue of its authority to fix valuations, made the definitive assessments.[3] It appears that the board of review met on March 8, 1937, and adjourned on March 20, 1937. It also appears that the rate for state taxes had been fixed by the statute,[4] and the rate for county taxes was set on February 8, 1937, under the authority given to the court of county commissioners.[5] The school district tax was approved by the electors of the school district at an election held on June 14, 1937. The taxes for the year 1937 became payable on October 1, 1937, and became delinquent on January 1, 1938.[6] Proceedings were then instituted in the county court for the sale of the lands, and under its decrees the sales took place on June 12, 1939. The lands were sold to the State and certificates of purchase were issued accordingly.

First.—The Government, invoking the principle that lands owned by the United States cannot be taxed by a State (*Van Brocklin* v. *Tennessee,* 117 U. S. 151) contends that the asserted

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limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

The State also cites Section 8874 of Article 6, Chapter 314, of the Code of Alabama, 1923, which provides:

"From and after the first day of October of each year, the state shall have a prior lien upon each and every piece or parcel of property, real or personal, for the payment of any and all taxes which may be assessed against the owner, or upon such property, during that year, for the use of the state; and the county shall have a like lien thereon for the payment of the taxes which may be assessed against such owner, or upon such property, during that year, for the use of the county; and these liens shall exist as to all lands bid in by the state at tax sales for the annual taxes thereafter assessed on the value of the property so purchased, in the event of the tax title failing".

[2] Act No. 194, General Acts Alabama, 1935, Sec. 29, p. 274.

[3] *Id.*, Secs. 50, 72, pp. 284, 292.

[4] *Id.*, Sec. 7, p. 263.

[5] *Id.*, Sec. 64, p. 288.

[6] *Id.*, Sec. 11, p. 267.

liens are without validity because at the time the tracts were acquired by the United States the amount of the taxes had not been ascertained, as the values had not then been assessed and the rates of taxation had not been fixed. Therefore it is said that the taxes had not then been imposed. The argument is that the Alabama tax statute does not "impose taxes" but "secures their payment" and that unless taxes are imposed the statute has no effect. The lien, it is urged, becomes "fixed and final" only when the taxes have been ascertained "by completion of levy and assessment".

There is no question however, as the Government concedes, that the state statute purports to impose a lien as of October 1, 1936, for the taxes which by the process of assessment were to become payable for the tax year 1937. October first is fixed as the tax day, and as of that day owners are to make their returns, values are to be fixed and the taxes laid. There is no question that the State thus undertakes to create an inchoate lien upon the lands as of the tax day, a lien which is to be effective for the amount of the taxes for the ensuing year as these are fixed by the defined statutory method. This lien by the state law is made effective not only as against the owners on the tax day but also as against subsequent mortgagees and purchasers. "It follows the land in the hands of the vendee, all persons being chargeable with a knowledge of its existence". *Driggers* v. *Cassaday*, 71 Ala. 529, 534. See, also, *Swann* v. *The State*, 77 Ala. 545; *State* v. *Alabama Educational Association*, 231 Ala. 11, 16. We find nothing in the Federal Constitution which invalidates such a statutory scheme. Subsequent lienors and purchasers have due notice of the tax liability imposed as of the tax day and of the process of assessment, and that liability, when its amount is definitely ascertained, relates back to the day specified. We recognized the validity of such a provision in *New York* v. *Maclay*, 288 U. S. 290, 292, where we observed that a tax lien created in a similar manner under a statute of New York "is effective for many purposes though its amount is undetermined. It is notice to mortgagees or purchasers, who are held to loan or purchase at their own risk if they take their mortgages or deeds before the tax has been assessed or paid". The precise decision in that case allowing priority to the United States

under R. S. 3466 for debts due by an insolvent corporation over claims of the State for franchise taxes due but not assessed or liquidated until after a receivership, in no way detracted from the recognition of the effectiveness of the state law creating a lien as against mortgagees and purchasers. As the court said, "Against mortgagees and purchasers a lien perfected afterwards may take effect by relation as of the date of the inchoate lien through which mortgagees and purchasers become chargeable with notice". *Id.*, p. 293. See also, *Osterberg* v. *Union Trust Co.*, 93 U. S. 424, 425, 428; *People* v. *Commissioners*, 104 U. S. 466, 468. Compare *Shotwell* v. *Moore*, 129 U. S. 590, 598. The lien in such a case, though inchoate on the day specified, and maturing when the extent of liability is ascertained by the statutory process, is similar in that respect, as the court said in the *Maclay* case, to the lien of a transfer tax or duty upon the estate of a decedent which is effective although the amount is ascertained after death.

Our present inquiry is whether, assuming the validity of the state statute creating a lien as of October 1, 1936, as against other subsequent purchasers, it should be deemed invalid as against the United States. The question is not whether such a lien could be enforced against the United States. The fact that the United States had taken title and that proceedings could not be taken against the United States without its consent would protect it against such enforcement. But that immunity would not be predicated upon the invalidity of the lien. If in this instance title had been taken by the United States in the summer of 1937 after the amount of the taxes had been ascertained and the respective liens were concededly valid, still proceedings against the United States could not be prosecuted without its consent.

The Government is not content with that measure of protection. The Government brings this suit in the view that it is entitled to have a marketable title and it seeks to remove the liens in question as clouds upon that title which would interfere with the disposition of the lands in the future. From that standpoint the Government asks a decree declaring the invalidity of the liens and enjoining the State from asserting any claim in the lands either adverse to the United States or to its successors in title. We think that the United States is not entitled to that relief. The United States took the conveyances with knowledge of the state law fixing the lien as

of October 1st. That law in creating such liens for the taxes subsequently assessed in due course and making them effective as against subsequent purchasers did not contravene the Constitution of the United States and we perceive no reason why the United States, albeit protected with respect to proceedings against it without its consent, should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands in Alabama who take conveyances on and after the specified tax date. It is familiar practice for grantees who take title in such circumstances to see that provision is made for the payment of taxes and the Government could easily have protected itself in like manner. Finding no constitutional infirmity in the state legislation, we think that the liens should be held valid.

We make no exception of the tract conveyed to the United States on the tax day, October 1, 1936, as we think the state statute, as contended by the State, is to be deemed effective from the moment the tax day began. See *Beck* v. *Johnson*, 235 Ala. 323, 324.

Second.—With respect to the tax sales the case has a different aspect. The proceedings in the county court for the sale of the lands were taken and the decrees were rendered after the United States had become the owner of the tracts. A proceeding against property in which the United States has an interest is a suit against the United States. *The Siren*, 7 Wall. 152, 154. The United States was an indispensable party to proceedings for the sale of the lands, and in the absence of its consent to the prosecution of such proceedings, the county court was without jurisdiction and its decrees, the tax sales and the certificates of purchase issued to the State were void. *Minnesota* v. *United States*, 305 U. S. 382, 386. While pleading to the contrary in its answer, the invalidity of the tax sales is now conceded by the State.

The United States is entitled to a decree setting aside the tax sales and the certificates of purchase, and in other respects the complaint is dismissed.

It is so ordered.

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